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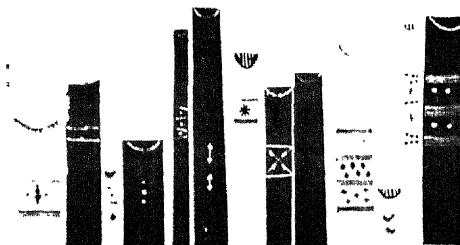
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UNITED NATIONS



Repertory of Practice
of
United Nations Organs

VOLUME I

Articles 1-22 of the Charter

NEW YORK, 1955

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United Nations Organs

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This Repertory should be cited as follows:
"Repertory of United Nations Practice."

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

UNITED NATIONS PUBLICATION

Sales No. 1955.V.2 (VOL. I)

Price: \$US 3.50, 25/- (sterling), Sw. fr. 14.00
(or equivalent in other currencies)

PREFACE

I am pleased to submit herewith the first volume of the *Repertory of Practice of United Nations Organs* requested by the General Assembly of the United Nations in its resolution 796 (VIII), adopted on 27 November 1953.

In requesting this Repertory, the purpose of the General Assembly, as stated in its resolution, was twofold: first, to facilitate its consideration at the tenth annual session of the proposal to hold a General Conference of the Members of the United Nations for the purpose of reviewing the Charter, as provided for in Article 109 (3) of the Charter; and second, to contribute to the knowledge and understanding of the Charter as it has been applied in practice by the organs of the United Nations.

Both of these aims will be served by this Repertory. It constitutes a comprehensive summary of the decisions of United Nations organs, together with related material, organized by Charter Articles, and presented in such a way as to throw light on questions of application and interpretation of the Charter which have arisen in practice. In five volumes, it will cover all of the Articles of the Charter in respect of which there have been decisions and discussions by the organs of the United Nations, for the period from which they began functioning until 1 September 1954.

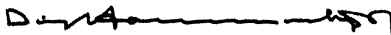
A work of this kind will undoubtedly prove of assistance to the Members of the United Nations, independently of the question of the General Conference under Article 109. Thus, it should facilitate the task of representatives and other officials in finding precedents and other pertinent data in the vast volume of the published Official Records of the Organization. If supplemented regularly, it will become more valuable from year to year as the Organization's records increase in size and complexity.

In unfolding the experience of the Organization in terms of the practical application of the Charter, the Repertory illuminates the instrument itself. The basic document of the United Nations has served its essential constitutional function. The framework which it has provided—of purposes, principles and procedures—has governed and guided the activities of the United Nations without unduly constricting the ability of the Member States to deal with the constantly changing problems they have had to face within the Organization.

These achievements should not be lost sight of in the contemplation of possible alterations in the text of the Charter. If it is assumed that improvements in the Charter are possible, given the necessary conditions, the problem remains when such improvements can best be attempted. When the General Assembly takes up at its tenth session, as it must, the proposal to convene a conference to review the Charter, it has also to consider what the proper time for such a review should be.

In this connexion it is pertinent to note that Article 109 (3) does not preclude the General Assembly and the Security Council from taking a decision in favour of a conference in accordance with the Article, but leaving it to a later session to decide on the date of the conference. In view of all the circumstances, valid arguments may be brought forward for such a line of action, that is, for a decision at the tenth session of the General Assembly in favour of a Charter review conference, leaving open for the time being, in the way just indicated, the question when the conference for that purpose should be convened.

Whatever may be the decision concerning a review conference, the United Nations must continually assess its experience in the light of the Charter. In regard to this task the *Repertory of Practice of United Nations Organs* should have lasting importance.



Secretary-General

GENERAL EXPLANATORY NOTE

Resolution 796 (VIII) of the General Assembly

1 On 17 September 1953, the General Assembly decided, on the recommendation of the General Committee, to include in the agenda of its eighth session and to refer to the Sixth Committee for consideration the three following items submitted by Argentina, the Netherlands and Egypt, respectively

(1) "Publication of documents concerning the drafting and application of the Charter";

(2) "Preparatory work with regard to the possible holding of a General Conference of the Members of the United Nations in accordance with Article 109 of the Charter";

(3) "Amendment of the Charter election of a technical committee to study and report on the amendment of the Charter on the basis of proposals to be submitted by Member States".

2. The Sixth Committee considered the three items together at ten meetings held from 19 October to 4 November. The Committee had before it draft resolutions¹ submitted by Argentina, by Costa Rica and Egypt, and jointly by Argentina, Canada, Cuba, the Netherlands, New Zealand and Pakistan. The first two of these draft resolutions were subsequently withdrawn in favour of the six-Power draft resolution, to which several amendments were submitted during the discussion.

3. The Sixth Committee also had before it a memorandum² submitted by the Secretary-General containing descriptions of and observations on the preparatory work which the Secretary-General might be requested to undertake

4. Under the heading of "Co-ordinated study of the application of the Charter", the Secretary-General observed that he had given attention to the usefulness of a more co-ordinated study regarding the application of the provisions of the Charter. As a result, he had decided that the first project to be undertaken would be the preparation of a repertory of practices under the Charter. The object of the Secretariat study was to provide, in a concise and useful form, a summary of United Nations practice in respect of all the Articles of the Charter, emphasis being placed upon those Articles or provisions in regard to which significant practice had developed in the organs of the United Nations throwing light upon the interpretation or application of particular provisions. The material would be organized primarily under the various Articles of the Charter, though in many cases a significant problem or topic would be dealt with under interrelated Articles, while in other cases, a topic falling under a part of an Article would be treated separately. The study would be a reference work which would include appropriate references to the records, with a treatment of the substance of the Article which would be comprehensive enough and sufficiently analytical to provide a basis for conclusions to be drawn by the reader.

5. With respect to the preparation of a repertory of practice by United Nations organs under the Charter, some representatives observed that it would assist Governments in forming a considered opinion about the desirability of convening a General Conference under Article 109. In addition, emphasis was laid on the intrinsic value of the proposed repertory, independently of the question of Charter review, in contributing to the understanding of the Charter. The view was expressed that the repertory should be prepared along the lines indicated in the Secretary-General's memorandum. No opposition to the repertory of practice as such was expressed, although some representatives opposed the adoption of the proposals submitted to

¹ G A (VIII), Annexes, pp. 3, 11 and 12, a.i. 58, 70 and 72.

² *Ibid.*, p. 10.

the Committee on the ground that they were intended to result in revision of the Charter.

6. The six-Power draft resolution, with certain amendments, was approved by the Sixth Committee by 48 votes to 5. On 27 November 1953, on the recommendation of the Sixth Committee, the General Assembly adopted the draft resolution, which became resolution 796 (VIII). Its preamble referred to Article 109 of the Charter and to the memorandum of the Secretary-General. The resolution requested the Secretary-General to prepare, publish and circulate among the Member States, *inter alia*, "A repertory of the practice of United Nations organs appropriately indexed".

General features of the Repertory of Practice of United Nations Organs

7. As was envisaged in the Secretary-General's memorandum, the Repertory treats the practice of the United Nations in a series of studies on the various Articles of the Charter or on parts of Articles. The organization of these studies^a is described below. Because the decisions of United Nations organs often have relevance to more than one provision of the Charter, the choice of the Article under which to present material has been governed by considerations of comparative pertinence and convenience of presentation. Abundant cross-reference has been made to overcome such disadvantages as arise from that method of organization.

8. The great mass of the material to be presented has required the division of the Repertory into five volumes. A separate index volume will also contain a complete table of contents of the Repertory.

9. The present volume covers the first twenty-two Articles of the Charter, which include the principal Articles relating to the General Assembly. The second volume will cover Articles 23 to 54 inclusive and relates principally to the Security Council. The third volume will cover Articles 55 to 72 inclusive and is concerned with international economic and social co-operation and with the Economic and Social Council. The fourth volume will cover Articles 73 to 91 inclusive and relates to Non-Self-Governing Territories, the International Trusteeship System and the Trusteeship Council. The last volume will cover the remaining Articles of the Charter, Articles 92 to 111, and relates to the International Court of Justice, the Secretariat, miscellaneous provisions, transitional security arrangements, amendments, ratification and signature.

10. The Statute of the International Court of Justice, although legally an integral part of the Charter, has not been covered except in so far as it has a bearing on the practice under Chapter XIV and other provisions of the Charter itself.

11. As a general rule, decisions of organs, made up to 31 August 1954, are included. Eight regular and two special sessions of the General Assembly, eighteen sessions of the Economic and Social Council, fourteen sessions of the Trusteeship Council and 678 meetings of the Security Council are, therefore, covered. In a few cases, reference is made to decisions of later date in order to complete the treatment of a particular point.

The practice of United Nations organs

12. The object of the Repertory being to provide a documented treatment of the application and interpretation which have been given the Charter in practice, it emphasizes the presentation of the decisions of United Nations organs. A "decision", for purposes of the Repertory, has been defined as any act of a United Nations organ adopting or rejecting, by vote or otherwise, a proposal in whatever form made. Included are advisory opinions of the International Court of Justice and decisions taken by the Secretariat in matters in which its competence extends to the application and interpretation of the Charter. Independent acts of individual Governments, such as the enactment of legislation in fulfilment of a Charter obligation, have been excluded since they do not constitute practice of United Nations organs.

^a The term "study" is used in the Repertory to describe the individual parts in which will be found the principal treatment of the material relating to an Article or part of an Article of the Charter.

13. While most of the decisions dealt with are decisions of principal organs, treatment has also been given to some decisions of subsidiary organs, for example, decisions which have been approved by principal organs, or of which note has been taken by them. Decisions of Main Committees relating to proposals not subsequently considered in plenary meeting have also been treated.

14. Not all decisions are treated in the Repertory. The consideration of the decisions to be included has been governed by the following criteria:

- (a) Whether reference has been made in a decision to a Charter Article;
- (b) Whether language taken from, or closely akin to that of a Charter provision has been used in a decision;
- (c) Whether a Charter provision has been invoked in the proceedings leading up to a decision;
- (d) Whether there is a clear implication that a decision is directly related to a Charter provision.

15. While all the decisions included in the Repertory meet one or another of these criteria, the Repertory does not include other decisions which also meet them. Many such decisions are of a repetitive or routine character; in these instances illustrative examples have generally been presented. Nor does the Repertory as a rule include decisions which merely implement a general programme laid down in a prior resolution. Moreover, the method of the Repertory has been, so far as possible, to present a selection of illustrative and representative decisions rather than an exhaustive compilation. Where useful, however, tabulations of decisions have been included in annexes or footnotes. The criteria noted in the preceding paragraph have thus been necessary rather than sufficient conditions for the inclusion of material in the Repertory.

16. The organization and presentation of the material has been based on a scrutiny of the proceedings which led to adoption of a decision as well as on examination of the text of the decision itself. It has been necessary to determine the questions of Charter application and interpretation which have arisen in practice, as a preliminary to the organized and coherent presentation of the decisions.

17. Material has thus been arranged under headings (and, where necessary, subheadings) indicative of the major questions of Charter application and interpretation that have arisen in connexion with a decision or group of decisions. Inclusion of a decision under a particular heading or a particular Article or part of an Article of the Charter carries no implication of lack of relevance to the Charter in other respects also. Many decisions have a multiple bearing and will be found treated or referred to in several different places. Conversely, decisions of a like kind or bearing are treated together illustratively.

18. The treatment of a decision as "relevant" to a Charter question is not intended to constitute a judgement whether or to what extent the decision is a ruling on that question. In this connexion, the object of the Repertory is to present the pertinent material in an organized and coherent form and thereby enable the reader to judge such questions for himself.

The treatment of discussion

19. As cases of decisions of United Nations organs addressed directly to constitutional questions are rare, it has been necessary to examine the discussions in order to ascertain the respects in which the decisions are relevant to the Charter. For this purpose, it has been found sufficient to group the statements of representatives by lines of argument and to summarize them, without attribution, taking into account significant variations. These summaries are generalized statements of views and do not necessarily reflect fully and in every respect the views held by any particular delegation whose declarations have been examined in formulating the summary of positions on one or another side of a question. The sources for the summaries of arguments are indicated, as appropriate, in comprehensive footnote references to the records of the proceedings leading up to a decision.

20. In connexion with the presentation of proposals, it has sometimes been found useful to identify the sponsoring delegation and to include its explanation

of the proposal. The statement of a Rapporteur or other officer of an organ is sometimes reproduced for its summary of the views of the body concerned. Where possible, summarized statements of views contained in committee reports have been used.

21. Other ancillary material has been examined and presented in the Repertory in association with the decisions of United Nations organs as a means of analysing and clarifying the Charter bearing of decisions. The Repertory therefore includes, as required, (a) proposals other than that on which a final decision was taken, (b) intermediate decisions of the organ taking the final decision; and (c) decisions of a subsidiary organ involved in the chain of proceedings leading to the final decision.

Organization of the individual studies

22. As a rule, the studies making up the Repertory are organized in the following way. A table of contents outlines the entire study. Following the text of each Article, or part of an Article of the Charter, will be found an Introductory Note explaining the organization of the material treated in the study and its relation to material treated under other Articles; the main body of the material is then presented in a General Survey and in an Analytical Summary of Practice.

23. The General Survey treats such over-all features of practice as the frequency and scope of application of an Article, the forms and methods used in applying it, and other significant general aspects of practice. Because decisions often have a bearing on a Charter Article in more than one respect, it has sometimes been found necessary to set them out in a single place as a whole, in order to avoid unnecessary repetition or the division of material into incoherent fragments. That has sometimes been done in the General Survey and sometimes in the Analytical Summary of Practice.

24. The Analytical Summary of Practice presents the more individual and specific questions of the application and interpretation of the Charter to which the decisions are related. These Charter questions constitute the basis for the headings and subheadings under which the decisions, together with the debates and other related material, are treated. Where a practice is well established, or a decision is typical of an entire range of decisions, the method of treatment has been to present a typical case, accompanied by references to the other cases. It has often been found desirable to show briefly the context of proceedings and proposals in which particular decisions or groups of decisions were made in order to bring out how questions of application and interpretation of the provisions of the Charter have arisen.

25. Some variations in this general scheme of organization have been necessary. In some instances a Summary of Practice serves in place of both the General Survey and the Analytical Summary of Practice. In others, treatment of an Article is contained in a Note; this method has been employed chiefly for Articles marked by absence of practice or treatment of which presents problems of duplication with the treatment of more detailed Articles of the Charter.

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ABBREVIATIONS

ACC	Administrative Committee on Co-ordination
<i>Ad Hoc</i> Pol Com	<i>Ad Hoc</i> Political Committee
Add	Addendum
AEC	Atomic Energy Commission
a i.	agenda item
Bank	International Bank for Reconstruction and Development
Com	Committee
Comm.	Commission
Corr.	Corrigendum
DC	Disarmament Commission
E S C	Economic and Social Council
FAO	Food and Agriculture Organization of the United Nations
1st Com	First Committee
G A	General Assembly
G A (I/1)	General Assembly (first part of first session)
G A (I/2)	General Assembly (second part of first session)
G A (S-I)	General Assembly (first special session)
G A (S-II)	General Assembly (second special session)
G A (III/1)	General Assembly (first part of third session)
G A (III/2)	General Assembly (second part of third session)
I C A O	International Civil Aviation Organization
I C J	International Court of Justice
I L O	International Labour Organisation
I T U	International Telecommunication Union
Joint 2nd and 3rd Com.	Joint Second and Third Committee
JSPB	Joint Staff Pension Board
mtg.	meeting
PC	Preparatory Commission of the United Nations
PCIJ	Permanent Court of International Justice
PCOB	Permanent Central Opium Board
Plen.	Plenary
Rev.	Revision
S C	Security Council
Suppl.	Supplement
TAB	Technical Assistance Board
T C	Trusteeship Council
UNCIO	United Nations Conference on International Organization
UNCOK	United Nations Commission on Korea
UNCURK	United Nations Commission for the Unification and Rehabilitation of Korea
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNKRA	United Nations Korean Reconstruction Agency
UNREF	United Nations Refugee Fund Executive Committee
UNRRA	United Nations Relief and Rehabilitation Administration
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSCOB	United Nations Special Committee on the Balkans
UNTCOK	United Nations Temporary Commission on Korea
UPU	Universal Postal Union
WHO	World Health Organization
WMO	World Meteorological Organization

PREAMBLE

**WE THE PEOPLES OF THE UNITED NATIONS
DETERMINED**

to save succeeding generations from the scourge of war, which
twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity
and worth of the human person, in the equal rights of men and
women and of nations large and small, and

to establish conditions under which justice and respect for the
obligations arising from treaties and other sources of inter-
national law can be maintained, and

to promote social progress and better standards of life in larger
freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another
as good neighbors, and

to unite our strength to maintain international peace and
security, and

to ensure, by the acceptance of principles and the institution of
methods, that armed force shall not be used, save in the com-
mon interest, and

to employ international machinery for the promotion of the
economic and social advancement of all peoples,

**HAVE RESOLVED TO COMBINE OUR EFFORTS
TO ACCOMPLISH THESE AIMS.**

Accordingly, our respective Governments, through represen-
tatives assembled in the city of San Francisco, who have exhibited
their full powers found to be in good and due form, have agreed to
the present Charter of the United Nations and do hereby establish
an international organization to be known as the United Nations.

Chapter I

PURPOSES AND PRINCIPLES

ARTICLES 1 AND 2 (1-5)

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TEXT OF ARTICLE 1

The Purposes of the United Nations are.

1. To maintain international peace and security, and to that end, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

TEXT OF ARTICLE 2 (1 - 5)

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

INTRODUCTORY NOTE

1. Article 1 of the Charter states the Purposes of the United Nations and Article 2 the Principles in accordance with which the Organization and its Members are to act. The other Articles of the Charter, apart from a few which amplify one or another provision of the first two Articles or which refer to them in particular contexts, for the most part contain the provisions prescribing procedures and conferring responsibilities and powers on the principal organs of the United Nations for the performance of the functions of the Organization.
2. The more general of these subsequent Articles relate these functions, responsibilities and grants of powers to the Purposes and Principles of the United Nations, either by express reference, as in Articles 14, 24 (2), 52, 76, 104 and 105, or by employing language derived from the text of Articles 1 and 2, as in Articles 11, 12, 13, 24 (1), 33-39 inclusive, 42, 43, 48, 51, 55, 73, 84 and 99. From a constitutional point of view, the decisions of United Nations organs taken under Articles of the Charter other than Articles 1 and 2 may be regarded as constituting the implementation of the latter Articles, and therefore as evidence of the application and interpretation in practice of the Purposes which the Organization seeks to achieve and of the Principles in accordance with which the Organization and its Members, in pursuit of the Purposes of the Charter, are obligated to act. This reciprocal relationship is often given expression in the decisions of organs in the form of references, made in a preamble or in an operative paragraph, to the Purposes and Principles of the Charter, or to parts of them, together with a citation of the Articles allocating powers and assigning functions and responsibilities.
3. A consideration of all such decisions in the study on the first two Articles of the Charter would duplicate matter which must also be dealt with elsewhere in the Repertory. No attempt has been made, therefore, to deal with all the relevant decisions in this part of the Repertory. The majority of the decisions taken by the organs of the United Nations on behalf of the Organization are dealt with in this Repertory under the Articles endowing the organs with authority to act in the areas of competence assigned to them.
4. The present study on Articles 1 and 2 has been limited to an examination of certain general features of the practice of United Nations organs in supporting their decisions by references to the Purposes and Principles of the Charter. Moreover, the study singles out for consideration the decisions of the General Assembly as the organ with the widest-ranging functions and responsibilities under the Charter, and sets out certain details of that practice in the form of tabulations in annexes. The relevant practice of the Security Council, the Economic and Social Council and the Trusteeship Council is dealt with in other parts of the Repertory as indicated below.
5. The relation between the duties of the Security Council and the Principles and Purposes of the United Nations, as exemplified in the practice of the Council is dealt with in this Repertory under Article 24, which confers on the Security Council primary responsibility for the maintenance of international peace and security and requires the Council, in discharging its duties under this responsibility, to act in accordance with the Purposes and Principles of the United Nations. Annexed to the study on Article 24 is a list of the questions which the Security Council has considered under its responsibility for the maintenance of international peace and security. A second annex to that study contains a classification of the measures employed by the Security Council in dealing with those questions in the discharge of its duties under Article 24.
6. Article 55 of the Charter defines some of the areas in which the United Nations shall promote the achievement of the Purposes cited in Article 1 (2) and Article 1 (3), and elaborates somewhat the statement of those Purposes. Responsibility for the

discharge of these functions is vested in the General Assembly and, under its authority, in the Economic and Social Council. References to Article 1 (2) and Article 1 (3) in the resolutions of these organs are often coupled 1/ with references to Article 55; in many cases, however, the resolutions refer only to Article 55. Accordingly, it has been deemed unnecessary to isolate for consideration under Article 1 decisions which are more appropriately dealt with as part of the practice under Article 55. The same holds true of decisions taken by the General Assembly in the discharge of its responsibilities in respect of Trust Territories, and, under its authority, of decisions taken by the Trusteeship Council.

7. The practice of United Nations organs bearing upon Article 2 (6) and Article 2 (7) is dealt with in detail in separate studies. Article 2 (6), relating to action in accordance with the Principles of Article 2 by States not Members of the United Nations, presents special features which cannot conveniently be dealt with elsewhere. Other material concerning States not Members of the United Nations will be found in this Repertory under Articles 10, 31, 32, 35, 69 and 86. Article 2 (7), relating to intervention in matters essentially within the domestic jurisdiction of any State, has been the subject of discussion in connexion with numerous decisions taken by the principal organs of the United Nations. For that reason it has been thought useful to assemble together in that study the material illustrating the practice of the organs related to that paragraph.

SUMMARY OF PRACTICE

8. The Purposes and Principles of the Charter, or particular phrases in them, have often been referred to in the preamble or the operative part of decisions. Such express references have frequently taken the form of mention as a whole of one or other or of both Articles 1 and 2, or of the Purposes and Principles as such; some decisions have made specific reference to particular language or particular paragraphs of these Articles. The Articles have also frequently been mentioned in debate by representatives when stating their positions on the merits of proposals under consideration and when seeking to throw light on the meaning and scope of other provisions of the Charter.

9. The practice of United Nations organs bearing on Articles 1 and 2 falls into two main categories. The first consists of decisions applicable generally, such as those concerned with the definition of standards of international conduct and the formulation of general programmes and their implementation. The second concerns the decisions of the Organization in respect of disputes and situations affecting the relations of particular States.

10. The practice under both categories reveals a constant reliance, both in the decisions and in the discussions leading to them, on the Purposes and Principles of the Charter as foundations on which to erect general international programmes in the

1/ For example, General Assembly resolution 637 (VII) entitled "The right of peoples and nations to self-determination".

political, economic, social, legal and cultural field, and as constitutional standards serving as guides to the organs of the United Nations in resolving problems presented by particular situations, and in determining standards of conduct to be followed by States in dealings with other States generally or in particular disputes and situations.

11. The content of the decisions related to the Purposes and Principles of the Charter is as wide and as varied as the scope of the Charter itself. In certain of the studies on the Articles of the Charter relating to the various principal organs, such as those on Articles 10, 11, 13, 14, 24, 55 and 76, will be found tabulations indicating the matters dealt with in the decisions of the organs concerned.

12. The modalities employed in achieving the Purposes and implementing the Principles of the Charter are equally wide and varied. They include the making of studies, reports and investigations, the dissemination of information, the making of recommendations to Member and non-member States, the declaration of legal principles, the adoption of standards for the conduct of States, the use of a host of subsidiary bodies in a variety of tasks and the institution of procedures for co-operation in every field within the scope of the Charter. They further include the drafting and adoption of conventions, the establishment and use of procedures for the pacific settlement of disputes and situations, the judicial settlement of controversies, political settlements, collective measures to forestall or counteract breaches of the peace and acts of aggression, the establishment and co-ordination of specialized agencies. Also included are the rendering of technical services, the hearing of petitioners, supervision through a system of international trusteeship of the administration of Trust Territories and other modalities.

13. In applying Articles 1 and 2, the organs of the United Nations have addressed each other, the specialized agencies, Members generally, all nations, particular Members and particular non-members. In this connexion, the question of the universal character of the Purposes and Principles of the Charter has arisen with particular reference to the obligation of States not Members of the United Nations to act in accordance with the Principles of Article 2. That question is dealt with separately in the study on Article 2 (6).

14. The organs of the United Nations have made determinations concerning the consonance of particular conduct with the provisions of Articles 1 and 2, and they have recommended to particular States that they be guided by those provisions of the Charter in the conduct of their relations or in negotiations with other States. They have also indicated, on the basis of an application and interpretation of Articles 1 and 2, particular measures to be taken and to be desisted from, and, on the same basis, they have recommended various procedures to be employed generally in respect of particular matters, and, specifically, in respect of particular disputes and situations.

15. In connexion with the consideration of particular disputes and situations by the organs of the United Nations, questions have been raised in regard to the extent to which the principal organs may rely upon the provisions of Article 1 in determining the recommendations to be made to the States concerned. For example, in connexion with the application and interpretation of Article 1 (3), the question arose whether that Article contained sufficiently precise standards in order to be invoked in the proceedings of the Organization as a basis for specific recommendations. It was questioned whether, in order to be available as a basis for consideration of the conduct of particular States by the Organization, Article 1 (3) did not require to be spelled out in detailed provisions contained in a convention or other instrument of legal obligation drawn up by an organ of the United Nations or negotiated by Members themselves and adopted by them. As a corollary, the question was asked whether, by reason of the absence of such detailed and obligatory formulation of the content of the first Article of the Charter, the matters to which it related were not essentially

within the domestic jurisdiction of States and therefore constituted matters which Members were not required to submit to settlement under the Charter. 2/

The Practice of the General Assembly

16. While the functions of each of the principal organs of the United Nations are expressly related by the Charter to the Purposes and Principles of the United Nations, the widest connexion of that kind is established in respect of the General Assembly, the functions, responsibilities and powers of which, by virtue of Article 10, cover all matters within the scope of the Charter, or related to the powers and functions of the organs provided for in it.

1. The Purposes and Principles as a whole

17. In discharging these broad responsibilities, the General Assembly has frequently referred to the Purposes and Principles of the Charter as a whole as forming the constitutional grounds of its decisions. When taking a decision in a particular area within the scope of its functions, it has often based that decision on a reference to the Purposes and Principles of the Charter, suggesting that they are viewed as indivisible. Again, in other decisions it has established links between the achievement of the different Purposes of the several paragraphs of Article 1 or between all or some of the provisions of Article 1, and various provisions of Article 2.

18. An illustration of the way in which inter-relations and links between the various Purposes of the United Nations to be achieved have been developed in practice is afforded by the proceedings leading to the adoption of resolution 377 (V), entitled "Uniting for peace". 3/ At the fifth session of the Assembly, two items concerning the maintenance of international peace and security were submitted for inclusion in the agenda; agenda item 66, entitled "Strengthening of democratic principles as a means of contributing to the maintenance of universal peace", was submitted by Chile, and agenda item 68, entitled "United action for peace", was submitted by the United States. The purpose of the first agenda item was explained in the memorandum by Chile accompanying the request for inclusion of the item in the following terms:

"... it is absolutely necessary to unite the efforts of all countries that practise respect for human rights and are naturally peace-loving, to the end that, within the powers and means authorized by the Charter of the United Nations, they may:

"(1) Watch over the fulfilment of the principles, aims and purposes of the United Nations; and

"(2) Establish efficient machinery enabling its members to act jointly and rapidly in any emergency."

2/ For details of the questions mentioned in this paragraph, see G A (I/2), Joint Com. of the 1st and 6th Com., pp. 4, 10, 15, 23, 29, 32, 33 and 42. They were raised in the course of consideration of the agenda item entitled: "Treatment of Indians settled in the territory of the Union of South Africa". By resolution 44 (I), the General Assembly expressed the opinion that the treatment of Indians in the Union of South Africa should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter. See also in this Repertory under Articles 2 (7), 55 and 56.

3/ See G A (V), Annexes, a.i. 66 and 68.

19. The second agenda item in question was explained in the accompanying United States memorandum in the following terms:

"The General Assembly should be enabled to meet on very short notice, in case of any breach of international peace or act of aggression, if the Security Council, because of lack of unanimity of the permanent members, is unable to discharge its primary responsibility for the maintenance of peace and security."

20. Both items were referred to the First Committee. A draft resolution 4/ submitted by Chile during the discussion of the item submitted by the United States was based on the most comprehensive general and detailed references to the Purposes and Principles of the Charter. A draft resolution 5/ submitted during the discussion of agenda item 68 by the United States and certain other Members contained a reference to "the first Purpose of the United Nations" and to resolution 290 (IV), entitled "Essentials of peace". In the First Committee, the sponsors of the two draft resolutions agreed to incorporate in the joint text the main ideas expressed in the text submitted by Chile, which was then withdrawn. 6/ The draft resolution, subsequently adopted by the General Assembly as resolution 377 (V), entitled "Uniting for peace", was thus broadened to include the Purposes and Principles as a whole. The relevant operative paragraphs of that resolution read:

"The General Assembly,

".

"14. Is fully conscious that, in adopting the proposals set forth above, enduring peace will not be secured solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends also upon the observance of all the Principles and Purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon respect for and observance of human rights and fundamental freedoms for all and on the establishment and maintenance of conditions of economic and social well-being in all countries; and accordingly

"15. Urges Member States to respect fully, and to intensify, joint action, in co-operation with the United Nations, to develop and stimulate universal respect for and observance of human rights and fundamental freedoms, and to intensify individual and collective efforts to achieve conditions of economic stability and social progress, particularly through the development of underdeveloped countries and areas."

The first of the paragraphs quoted above was reaffirmed in resolution 721 (VIII) in connexion with the question of race conflict in South Africa.

4/ G A (V), Annexes, a.i. 68, p. 3, A/C.1/575.

5/ Ibid., p. 4, A/C.1/576.

6/ G A (V), 1st Com., 354th-363rd mtgs.

2. Article 2 as a whole

21. The most frequent reference to Article 2 or to the Principles of the Charter generally is found in decisions linking the obligation of Members to act in accordance with these Principles to one or more of the Purposes stated in Article 1. Examples are resolution 290 (IV), "Essentials of peace"; resolution 378 (V), "Duties of States in the event of the outbreak of hostilities" and resolution 380 (V), "Peace through deeds". Relatively few decisions refer to the Principles alone or to particular Principles without connecting them with the Purposes of the Charter.

3. Article 2 (1)

22. The principle of the sovereign equality of all Members of the United Nations has been a subject of occasional discussion and has been taken into account in decisions concerning rules of procedure; illustrative cases will be found in this Repertory under Article 21. It constituted one of the guiding principles in resolution 291 (IV), entitled "Promotion of the stability of international relations in the Far East". Certain resolutions have linked references to sovereignty and to independence in a way to suggest a connexion between Article 2 (1) and Article 2 (4). Such have been resolutions containing general recommendations concerning non-interference with the sovereign rights and independence of under-developed countries in connexion with rendering technical assistance. An example is provided by resolution 200 (III), concerning technical assistance for economic development, 7/ which provided (in paragraph 4 (d)) that

"The technical assistance furnished shall (i) not be a means of foreign economic and political interference in the internal affairs of the country concerned and shall not be accompanied by any considerations of a political nature";

Another example is provided by resolution 626 (VII), concerning the exploitation of natural resources.

4. Article 2 (2)

23. The implications of the obligation to carry out agreements in good faith were elaborated in resolution 290 (IV), "Essentials of peace", in resolution 291 (IV), "Promotion of the stability of international relations in the Far East", and in resolutions 383 (V) and 505 (VI), both relating to threats to the political independence and territorial integrity of China and to the peace of the Far East.

5. Article 2 (3)

24. The obligation of peaceful settlement of disputes was one of the grounds of resolution 288 (IV), entitled "Threats to the political independence and territorial integrity of Greece", and of resolution 378 (V), entitled "Duties of States in the event of the outbreak of hostilities". Further aspects of the implementation of the obligations of Members relating to the peaceful settlement of disputes are dealt with in this Repertory under Articles 11, 13, 14, 33 (1) and 35, on which the practice of United Nations organs chiefly bears.

7/ See also General Assembly resolution 304 (IV) approving Economic and Social Council resolution 222 A (IX).

6. Article 2 (4)

25. Perhaps the most frequent reference to a Principle of the Charter is to be found in decisions reminding Members of their obligations under Article 2 (4). Such decisions have included general reminders to all Members and to particular Members, and partial elaborations of the implications of that Article. Resolutions 192 (III), 290 (IV), 291 (IV), 378 (V) and 380 (V) are cases in point.

7. Article 2 (5)

26. The General Assembly, the Security Council and the Economic and Social Council have called on Members to assist the United Nations in action taken by the latter in accordance with the Charter. The General Assembly and the Security Council have also called on Members to refrain from giving assistance to States against which the United Nations was taking preventive or enforcement action. Examples are provided by the Security Council resolutions of 25 June 1950 8/ and 27 June 1950, 9/ General Assembly resolution 498 (V) and Economic and Social Council resolution 323 (XI). 10/

8/ S C, 5th yr., No. 15, 473rd mtg., S/1501, pp. 16 and 17.

9/ S C, 5th yr., No. 16, 474th mtg., S/1511, pp. 16 and 17.

10/ See in this Repertory under Article 65.

ANNEX I

Tabulation of decisions of the General Assembly referring to
the Purposes and Principles of the Charter as a whole

<u>Resolution No.</u>	<u>Title</u>	<u>Charter reference</u>
40 (I)	Voting Procedure in the Security Council (See also resolution 503 (VI) below)	The General Assembly was "Mindful of the Purposes and Principles of the Charter of the United Nations,"
62 (I)	Refugees and Displaced Persons	In framing the Constitution of the International Refugee Organization, the General Assembly provided, in article 2 of the Constitution, for "The functions of the Organization to be carried out in accordance with the purposes and the principles of the Charter of the United Nations,"
109 (II)	Threats to the political independence and territorial integrity of Greece (See also resolutions 193 (III) and 288 (IV) below)	The General Assembly recalled that Members of the United Nations had obligated themselves "to carry out the purposes and principles of the Charter,"
110 (II)	Measures to be taken against propaganda and the inciters of a new war	The General Assembly requested the Government of each Member to take appropriate steps within its constitutional limits "to promote, by all means of publicity and propaganda available to them, friendly relations among nations based upon the purposes and principles of the Charter;"
137 (II)	Teaching of the purposes and principles, the structure and activities of the United Nations in the schools of Member States	The General Assembly recommended to all Member Governments that they take measures "to encourage the teaching of the United Nations Charter and the purposes and principles,"
192 (III)	Prohibition of the atomic weapon and reduction by one-third of the armaments and armed forces of the permanent members of the Security Council	The General Assembly referred to its activity "with regard to the regulation of armaments in accordance with the purposes and principles defined by the Charter;"

Annex I (continued)

<u>Resolution No.</u>	<u>Title</u>	<u>Charter reference</u>
193 (III) and 288 (IV)	Threats to the political independence and territorial integrity of Greece	The General Assembly considered that certain acts were inconsistent with "the purposes and principles of the Charter of the United Nations,".
217 A (III)	International Bill of Human Rights	The General Assembly found in the Purposes and Principles of the Charter a limitation on the acts in respect of which "the right to seek and to enjoy in other countries asylum from persecution" was to be recognized, and a limitation on the exercise of human rights and fundamental freedoms
257 (III)	Permanent Missions to the United Nations	The General Assembly considered that the presence of permanent missions "serves to assist in the realization of the purposes and principles of the United Nations".
265 (III)	Treatment of people of Indian origin in the Union of South Africa (See also resolution 44 (I) in annex II below)	The General Assembly invited the Governments concerned to enter into discussion at a round-table conference, "taking into consideration the purposes and principles of the Charter of the United Nations and the Declaration of Human Rights".
290 (IV)	Essentials of peace	The General Assembly "Declares that the Charter of the United Nations, the most solemn pact of peace in history, lays down basic principles necessary for an enduring peace; that disregard of these principles is primarily responsible for the continuance of international tension; and that it is urgently necessary for all Members to act in accordance with these principles in the spirit of co-operation on which the United Nations was founded;".

<u>Resolution No.</u>	<u>Title</u>	<u>Charter reference</u>
377 (V).	Uniting for peace	<p>The General Assembly</p> <p>"14. Is fully conscious that, in adopting the proposals set forth above, enduring peace will not be secured solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends also upon the observance of all the Principles and Purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon respect for an observance of human rights and fundamental freedoms for all and on the establishment and maintenance of conditions of economic and social well-being in all countries; and accordingly</p> <p>"15. Urges Member States to respect fully, and to intensify, joint action, in co-operation with the United Nations, to develop and stimulate universal respect for and observance of human rights and fundamental freedoms, and to intensify individual and collective efforts to achieve conditions of economic stability and social progress, particularly through the development of under-developed countries and areas."</p>

Annex I (continued)

<u>Resolution No.</u>	<u>Title</u>	<u>Charter reference</u>
384 (V)	Intervention of the Central People's Government of the People's Republic of China in Korea	The General Assembly declared that "further steps should then be taken for a peaceful settlement of existing issues in accordance with the Purposes and Principles of the United Nations,"
395 (V)	Recognition by the United Nations of the representation of a Member State	The General Assembly recommended that the question of representation of a Member State, when becoming the subject of controversy in the United Nations, "should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case;"
421 (V)	Draft International Covenant of Human Rights and measures of implementation: future work of the Commission on Human Rights	The General Assembly considered "That in the drafting of the Covenant account should be taken of the Purposes and Principles of the Charter of the United Nations and that these Purposes and Principles should be consistently applied and assiduously protected;"
483 (V)	Provision of a United Nations distinguishing ribbon or other insignia for personnel which has participated in Korea in the defence of the Principles of the Charter of the United Nations	<u>The title of the resolution is self-explanatory</u> .

Resolution
No.

Title

Charter reference

502 (VI)

Regulation, limitation and balanced reduction of all armed forces and all armaments; international control of

and

503 (VI)

atomic energy
Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter a/

In these two resolutions the General Assembly affirmed the connexion of the development of an effective United Nations collective security system and the progressive reduction of the armed forces and armaments of the world with the Purposes and Principles of the Charter. Moreover, in resolution 503 (VI), the General Assembly addressed a recommendation to the Security Council

concerning periodic meetings of the Council which would serve to remove tension and establish friendly relations "in furtherance of the Purposes and Principles of the Charter."

510 (VI)

Appointment of an impartial international commission under United Nations supervision to carry out a simultaneous investigation in the Federal Republic of Germany, in Berlin, and in the Soviet Zone of Germany in order to determine whether existing conditions there make it possible to hold genuinely free elections throughout these areas

The General Assembly related "the Purposes and Principles of the United Nations as set out in the Charter," to the achievement of the unity of Germany in the interests of world peace.

545 (VI)

Inclusion in the International Covenant or Covenants on Human Rights of an article relating to the right of peoples to self-determination

In deciding to include an article concerning the right of all peoples and nations to self-determination, the General Assembly provided that the article should stipulate "that all States, including those having responsibility for the administration of Non-Self-Governing Territories, should promote the realization of that right, in conformity with the Purposes and Principles of the United Nations,".

a/ See also G A resolution 703 (VII).

Annex I (continued)

<u>Resolution No.</u>	<u>Title</u>	<u>Charter reference</u>
611 (VII) and 612 (VII)	The Tunisian question The question of Morocco	The General Assembly expressed its confidence that the Government of France would endeavour to further the effective development of the free institutions of the peoples of Tunisia and Morocco, "in conformity with the Purposes and Principles of the Charter;"
613 (VII)	Question of an appeal to the Powers signatories to the Moscow Declaration of 1 November 1943 for the early fulfilment of their pledges towards Austria	The General Assembly expressed its desire "to contribute to the strengthening of international peace and security and the developing of friendly relations among nations in conformity with the Purposes and Principles of the Charter,"
616 (VII) and 721 (VIII)	The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa	By resolution 616 (VII) the General Assembly established a Commission "to study the racial situation in the Union of South Africa in the light of the Purposes and Principles of the Charter,". In resolution 721 (VIII), the General Assembly reaffirmed the declaration in resolution 377 (V) that "a genuine and lasting peace depends also upon the observance of all the Principles and Purposes established in the Charter of the United Nations,".
626 (VII)	Right to exploit freely natural wealth and resources	The General Assembly declared "that the right of peoples freely to use and exploit their natural wealth and resources is inherent in their sovereignty and is in accordance with the Purposes and Principles of the Charter of the United Nations,".

ANNEX II.

Tabulation of decisions of the General Assembly referring to specific Purposes and Principles of the Charter

<u>Resolution No.</u>	<u>Title</u>	<u>Extract of provisions</u>	<u>Charter provisions</u>
44 (I)	Treatment of Indians in the Union of South Africa	In resolution 44 (I), the General Assembly, "Having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter:	1 (2), 1 (3), 2 (2)
265 (III) b/, 395 (V), 511 (VI), 615 (VII) b/, and 719 (VIII)	Treatment of people of Indian origin in the Union of South Africa	"1. States that, because of that treatment, friendly relations between the two Member States have been impaired and, unless a satisfactory settlement is reached, these relations are likely to be further impaired; "2. Is of the opinion that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter;".	
48 (I)	Relief needs after the termination of UNRRA (United Nations Relief and Rehabilitation Administration)	In the other resolutions, the General Assembly expressed the view that "a policy of racial segregation (apartheid) is necessarily based on doctrines of racial discrimination" and considered that certain "actions of the Government of the Union of South Africa are not in keeping with its obligations and responsibilities under the Charter of the United Nations,". "Considering that one of the purposes of the United Nations is to be a centre for harmonizing the actions of nations in the attainment of their common ends, including international co-operation in solving international problems of an economic and humanitarian character;	1 (3), 1 (4)

b/ See annex I above.

Annex II (continued)

<u>Resolution No.</u>	<u>Title</u>	<u>Extract of provisions</u>	<u>Charter provisions</u>
56 (I)	Political Rights of Women	<p>"Reaffirming the principle that at no time should relief supplies be used as a political weapon, and that no discrimination should be made in the distribution of relief supplies because of race, creed or political belief:"</p> <p>"Whereas</p> <p>"In the Preamble of the Charter the peoples of the United Nations have reaffirmed faith in the equal rights of men and women, and in Article 1 it is stated that the purposes of the United Nations are, among others, to achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to sex, and to be a centre for harmonizing the actions of nations in the attainment of those common ends,</p> <p>".....</p> <p>"Therefore</p> <p>"(a) Recommends that all Member States, which have not already done so, adopt measures necessary to fulfil the purposes and aims of the Charter in this respect by granting to women the same political rights as to men;"</p> <p>The General Assembly resolved "in the spirit of paragraphs 3 and 4 of Article 1 of the Charter, to authorize the holding of a conference of all Members of the United Nations on freedom of information;"</p> <p>The General Assembly called upon the Governments concerned to settle their disputes by peaceful means.</p>	<p>1 (3), 1 (4)</p> <p>1 (3), 1 (4)</p> <p>1 (1), 2 (3)</p>
59 (I)	Calling of an International Conference on Freedom of Information		
109 (II)	Threats to the political independence and territorial integrity of Greece		

<u>Resolution No.</u>	<u>Title</u>	<u>Extract of provisions</u>	<u>Charter provisions</u>
193 (III) and 288 (IV)	Same	<p>The General Assembly noted the conclusion of the Special Committee that a continuation of the situation "constitutes a threat to the political independence and territorial integrity of Greece", considered that certain acts endangered peace in the Balkans and were inconsistent with the Purposes and Principles of the Charter, and called upon the Governments concerned to settle their disputes by peaceful means.</p>	2 (4), 2 (3) In resolution 288 (IV) explicit reference was made to Article 2 (3)
127 (II)	False or distorted reports	<p>"Considering that, under Article 1 of the Charter, Members are bound to develop friendly relations amongst themselves and to achieve international co-operation in promoting and encouraging respect for human rights and fundamental liberties;</p> <p>"Considering that to attain this end it is essential to facilitate and increase the diffusion in all countries of information calculated to strengthen mutual understanding and ensure friendly relations between the peoples;</p> <p>"Considering that substantial progress in this sphere can be achieved only if measures are taken to combat, within the limits of constitutional procedures, the publication of false or distorted reports likely to injure friendly relations between States,</p>	1 (2), 1 (3)
		"Invites the Governments of States Members	
		"1. To study such measures as might with advantage be taken on the national plane to combat, within the limits of constitutional procedures, the diffusion of false or distorted reports likely to injure friendly relations between States;"	

<u>Resolution No.</u>	<u>Title</u>	<u>Extract of provisions</u>	<u>Charter provisions</u>
190 (III)	Appeal to the great Powers to renew their efforts to compose their differences and establish a lasting peace	"Whereas it is the essential purpose of the United Nations to maintain international peace and security and to that end it must co-ordinate its efforts to bring about by peaceful means the settlement of international disputes or situations which might lead to a breach of the peace,"	1 (1), 1 (4), 2 (3)
272 (III)	Observance in Bulgaria and Hungary of human rights and fundamental freedoms	"Whereas the United Nations should be a centre for harmonizing the actions of nations in the attainment of this common end,"	1 (3)
277 (III)	Freedom of information	"Considering that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,"	1 (1), 1 (2)
		"Considering that the Governments of Bulgaria and Hungary have been accused, before the General Assembly, of acts contrary to the purposes of the United Nations and to their obligations under the Peace Treaties to ensure to all persons within their respective jurisdictions the enjoyment of human rights and fundamental freedoms,"	
		The preamble of the draft Convention on the International Transmission of News and the Right of Correction, annexed to Resolution 277 (III), stated:	
		"Desiring thereby to protect mankind from the scourge of war, to prevent the recurrence of aggression from any source, and to combat all propaganda which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression,	
		"Considering the danger to the maintenance of friendly relations between peoples and to the preservation of peace, arising from the publication of inaccurate reports,"	

<u>Resolution No.</u>	<u>Title</u>	<u>Extract of provisions</u>	<u>Charter provisions</u>
426 (v)	Draft Convention on Freedom of Information	The General Assembly declared "that freedom of information and the Purposes of the United Nations are indivisible,".	1 (1), 1 (2), 1 (3), 2 (2), 2 (3), 2 (4)
290 (IV)	Essentials of peace c/	<p>"Calls upon every nation</p> <p>"</p> <p>"2. To refrain from threatening or using force contrary to the Charter;</p> <p>"3. To refrain from any threats or acts, direct or indirect, aimed at impairing the freedom, independence or integrity of any State, or at fomenting civil strife and subverting the will of the people in any State;</p> <p>"4. To carry out in good faith its international agreements;</p> <p>"5. To afford all United Nations bodies full co-operation and free access in the performance of the tasks assigned to them under the Charter;</p> <p>"6. To promote, in recognition of the paramount importance of preserving the dignity and worth of the human person, full freedom for the peaceful expression of political opposition, full opportunity for the exercise of religious freedom and full respect for all the other fundamental rights expressed in the Universal Declaration of Human Rights;</p> <p>"7. To promote nationally and through international co-operation, efforts to achieve and sustain higher standards of living for all peoples;</p>	

c/ See also annex I.

Annex II (continued)

Resolution No.	Title	Extract of provisions	Charter provisions
291 (IV)	Promotion of the stability of international relations in the Far East	<p>"9. To remove the barriers which deny to peoples the free exchange of information and ideas essential to international understanding and peace;</p> <p>"</p> <p>"11. To settle international disputes by peaceful means and to co-operate in supporting United Nations efforts to resolve outstanding problems;"</p> <p>"Whereas the peoples of the United Nations have expressed in the Charter of the United Nations their determination to practise tolerance, and to live together in peace with one another as good neighbours and to unite their strength to maintain international peace and security, and to that end the Members of the United Nations have obligated themselves to carry out the purposes and principles set forth in the Charter,</p> <p>"Whereas it is a purpose of the United Nations to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples,</p> <p>"Whereas the organization of the United Nations is based on the principle of the sovereign equality of all its Members and on respect for international agreements,</p> <p>"Whereas the Charter calls upon all Members to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,"</p>	<p>1 (2), 2 (1), 2 (4)</p>

<u>Resolution No.</u>	<u>Title</u>	<u>Extract of provisions</u>	<u>Charter provisions</u>
363 B (V)	Threats to the political independence and territorial integrity of China and to the peace of the Far East, resulting from Soviet violations of the Sino-Soviet Treaty of Friendship and Alliance of 14 August 1945 and from Soviet violations of the Charter of the United Nations d/	"Decides to draw the attention of all States to the necessity of complying faithfully with the recommendation contained in General Assembly resolution 291 (IV), the object of which is to promote the stability of international relations in the Far East, and which recommends specific principles for that purpose, including, inter alia, the principle of the scrupulous observance of the treaties in force when the resolution was adopted, the purpose of which was to secure the independence and territorial integrity of China."	2 (2), 2 (4)
377 (V)	Uniting for peace e/	The preamble of the resolution reproduced the provisions of paragraphs 1 and 2 of Article 1.	1 (1), 1 (2)
378 A (V)	Duties of States in the event of the outbreak of hostilities (See also 688 (VII), Question of defining aggression)	"Reaffirming the Principles embodied in the Charter, which require that the force of arms shall not be resorted to except in the common interest, and shall not be used against the territorial integrity or political independence of any State. "Desiring to create a further obstacle to the outbreak of war, even after hostilities have started, and to facilitate the cessation of the hostilities by the action of the parties themselves, thus contributing to the peaceful settlement of disputes,"	2 (3), 2 (4)
330 (V)	Peace through deeds	"Confident that, if all governments faithfully reflect this desire and observe their obligations under the Charter, lasting peace and security can be established,	1 (1), 2 (4)

d/ See also G A resolution 505 (VI).

e/ See also annex I and paragraphs 18 to 20 above.

Annex II (continued)

<u>Resolution No.</u>	<u>Title</u>	<u>Extract of provisions</u>	<u>Charter provisions</u>
		<p>"Condemning the intervention of a State in the internal affairs of another State for the purpose of changing its legally established government by the threat or use of force.</p> <p>"1. Solemnly reaffirms that, whatever the weapons used, any aggression, whether committed openly, or by fomenting civil strife in the interest of a foreign Power, or otherwise, is the gravest of all crimes against peace and security throughout the world;</p> <p>"2. Determines that for the realization of lasting peace and security it is indispensable:</p> <p>"(1) That prompt united action be taken to meet aggression whenever it arises;"</p> <p>"Recognizing that a more rapid economic development of under-developed countries, in particular an increase of their production, is essential for raising the level of productive employment and the living standards of their populations, for the growth of the world economy as a whole and for the maintenance of international peace and security,"</p> <p>The General Assembly was convinced "that the creation of a United Nations programme of relief and rehabilitation for Korea is necessary both to the maintenance of lasting peace in the area and to the establishment of the economic foundation for the building of a unified and independent nation".</p>	1 (1), 1 (5)
400 (V)	Financing of economic development of under-developed countries		
410 A (V)	Relief and Rehabilitation of Korea		1 (1), 1 (3), 2 (4), 2 (1)

The statement of general policy approved by the Assembly included the following paragraph:

"The United Nations programme of relief and rehabilitation for Korea shall be carried out in practice in such a way as to contribute to the rapid restoration of the country's economy in conformity with the national interests of the

<u>Resolution</u> <u>No.</u>	<u>Title</u>	<u>Extract of provisions</u>	<u>Charter</u> <u>provisions</u>
498 (V)	Intervention of the Central People's Government of the People's Republic of China in Korea	<p>"3. Affirms the determination of the United Nations to continue its action in Korea to meet the aggression;</p> <p>"4. Calls upon all States and authorities to continue to lend every assistance to the United Nations action in Korea;</p> <p>"5. Calls upon all States and authorities to refrain from giving any assistance to the aggressors in Korea;</p> <p>"6. Requests a Committee composed of the members of the Collective Measures Committee as a matter of urgency to consider additional measures to be employed to meet this aggression if/ and to report thereon to the General Assembly, it being understood that the Committee is authorized to defer its report if the Good Offices Committee referred to in the following paragraph reports satisfactory progress in its efforts;</p> <p>"7. Affirms that it continues to be the policy of the United Nations to bring about a cessation of hostilities in Korea and the achievement of United Nations objectives in Korea by peaceful means, and requests the President of the General Assembly to designate forthwith two persons who would meet with him at any suitable opportunity to use their good offices to this end."</p>	1 (1), 2 (5)
506 A (VI)	Admission of new Members, including the right of	<p>The General Assembly expressed the view that the judgment of the Organization that the States were willing and able to carry out the obligations contained in the</p>	1 (2), 2 (2), 2 (3)
<u>i/ See also G A resolution 500 (V), entitled "Additional measures to be employed to meet the aggression in Korea".</u>			

Resolution No.	Title	Extract of provisions	Charter provisions
509 (VI)	candidate States to present proof of the conditions under Article 4 of the Charter	Charter and were otherwise qualified for membership "ought to be based on facts such as: the maintenance of friendly relations with other States, the fulfilment of international obligations and the record of a State's willingness and present disposition to submit international claims or controversies to pacific means of settlement established by international law".	1 (2), 14
545 (VI)	Complaint of hostile activities of the Government of the Union of Soviet Socialist Republics and the Governments of Bulgaria, Hungary, Romania and Albania, as well as the Governments of Czechoslovakia and Poland, against Yugoslavia	"Mindful of the purpose of the United Nations 'To develop friendly relations among nations based on respect for the principle of equal rights and self- determination of peoples, and to take other appropriate measures to strengthen universal peace,' " "Mindful of the authority of the General Assembly to 'recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations,'" " "The General Assembly "(i) To save the present and succeeding generations from the scourge of war, "(ii) To reaffirm faith in fundamental human rights, and "(iii) To take due account of the political aspirations of all peoples and thus to further international peace and security, and to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,"	1 (2), 1 (3)
511 (VII) and 612 (VII)	The Tunisian question <u>h/</u> The question of Morocco <u>h/</u>	"Mindful of the necessity of developing friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,"	1 (1), 1 (2), 1 (4)

g/, h/ See also annex I above.

Resolution No.	Title	Extract of provisions	Charter provisions
616 (VII)	The question of race ^{b/} conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa	<p>"Considering that the United Nations, as a centre for harmonizing the actions of nations in the attainment of their common ends under the Charter, should strive towards removing any causes and factors of misunderstanding among Member States, thus re-asserting the general principles of co-operation in the maintenance of international peace and security,"</p> <p>"Considering that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,</p> <p>".....</p> <p>"1. Establishes a Commission, consisting of three members, to study the racial situation in the Union of South Africa in the light of the Purposes and Principles of the Charter, with due regard to the provisions of Article 2, paragraph 7, as well as the provisions of Article 1, paragraphs 2 and 5, Article 13, paragraph 1 b, Article 55 c, and Article 56 of the Charter, and the resolutions of the United Nations on racial persecution and discrimination, and to report its conclusions to the General Assembly at its eighth session,"</p>	1 (2), 1 (3)
626 (VII)	Right to exploit freely ^{i/} natural wealth and resources	<p>"Considering that the economic development of the under-developed countries is one of the fundamental requisites for the strengthening of universal peace,</p> <p>"Remembering that the right of peoples freely to use and exploit their natural wealth and resources is inherent in their sovereignty and is in accordance with the Purposes and Principles of the Charter of the United Nations,</p>	1 (2), 1 (3)

^{b/}, ^{i/} See also annex I above.

Annex II (continued)

Charter
provisions

Extract of provisions

Title

Resolution
No.

"1. Recommends all Member States, in the exercise of their right freely to use and exploit their natural wealth and resources wherever deemed desirable by them for their own progress and economic development, to have due regard, consistently with their sovereignty, to the need for maintaining the flow of capital in conditions of security, mutual confidence and economic co-operation among nations;

"2. Further recommends all Member States to refrain from acts, direct or indirect, designed to impede the exercise of the sovereignty of any State over its natural resources."

Regulation, limitation and balanced reduction of all armed forces and all armaments: report of the Disarmament Commission ^{j/}

704 (VII)

1 (1),
2 (3),
2 (4)

"Recognizing that:
"Under the Charter of the United Nations all States are bound to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, and to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

"The aim of a system of world-wide disarmament is to prevent war and release the world's human and economic resources for the purposes of peace,".

Complaint by the Union of Burma regarding aggression against it by the Government of the Republic of China ^{j/}

707 (VII)

1 (1),
2 (4)

"Having examined the complaint by the delegation of the Union of Burma regarding the presence, hostile activities and depredations of foreign forces in the territory of the Union of Burma,

"Considering that these facts constitute a violation of the territory and sovereignty of the Union of Burma,

^{j/} See also resolution 717 (VIII).

<u>Resolution No.</u>	<u>Title</u>	<u>Extract of provisions</u>	<u>Charter provisions</u>
		"Affirming that any assistance given to these forces which enables them to remain in the territory of the Union of Burma or to continue their hostile acts against a Member State is contrary to the Charter of the United Nations,	
		"Considering that the refusal of these forces to submit to disarmament or internment is contrary to international law and usage,	
		"1. Deplores this situation and condemns the presence of these forces in Burma and their hostile acts against that country;	
		"2. Declares that these foreign forces must be disarmed and either agree to internment or leave the territory of the Union of Burma forthwith;	
		"3. Requests all States to respect the territorial integrity and political independence of the Union of Burma in accordance with the principles of the Charter,"	
		"Desiring to secure general and full observance of the requirements of international law and of universal standards of human decency,	
		".....	1 (1), 1 (3)
		"2. Condemns the commission by any Governments or authorities of murder, mutilation, torture, and other atrocious acts against captured military personnel or civilian populations, as a violation of rules of international law and basic standards of conduct and morality and as affronting human rights and the dignity and worth of the human person."	
804 (VIII)	Question of atrocities committed by the North Korean and Chinese Communist forces against United Nations prisoners of war in Korea		

ARTICLE 2 (6)

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TEXT OF ARTICLE 2 (6)

The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

INTRODUCTORY NOTE

1. Under the terms of Article 2 (6), the Organization shall ensure that non-member States act in accordance with "these Principles so far as may be necessary for the maintenance of international peace and security". The term "these Principles" refers to the Principles set forth in Article 2.
2. Since the responsibility for the maintenance of international peace and security is entrusted by the Charter to the Security Council and to the General Assembly, the present study examines the decisions of these two principal organs concerning actions to be taken by or in respect of non-member States.
3. The General Survey indicates whether a case has been brought before the Organization or whether action has been taken by it in explicit application of Article 2 (6); it also briefly covers the range and types of the decisions of the Organization which bear upon the provisions of Article 2 (6).
4. The Analytical Summary of Practice provides an analysis of the decisions of the Organization affecting non-member States and bearing on Article 2 (6). Cross references are made to other studies in this Repertory dealing with those Articles in application of which the decisions were taken. Since the decisions which may be said to bear upon Article 2 (6) are many and varied, those treated herein are merely intended to illustrate the scope of action taken.
5. In only one case had fairly extensive discussion taken place which reflected the meaning given to Article 2 (6) by certain delegations. The views expressed by those delegations are therefore summarized under a separate heading (section E) in the Analytical Summary of Practice.
6. In addition to Article 2 (6), the following Articles contain express reference to non-member States in regard to their relations with the United Nations: Article 11 (2) confers upon the General Assembly the power to discuss any questions relating to the maintenance of international peace and security, including those brought before it by a non-member State in accordance with Article 35 (2); Article 32 makes provision for the right and conditions of participation by any non-member State in the discussion of the Security Council relating to a dispute to which it is a party; Article 35 (2) deals with the submission by a non-member State of a dispute to the General Assembly or the Security Council, as well as with the obligations which that State must accept in advance; Article 50 confers on a non-member State the right to consult the Security Council in connexion with special economic problems arising out of carrying out preventive or enforcement measures taken by the Council against any State; and Article 93 (2) enables a non-member State to become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council. There are other

provisions of the Charter referring to a "State" or "States" without limitation to Members of the United Nations, such as Articles 2 (7) and 81. Finally, the Charter refers to "friendly relations among nations" in Articles 1 (2), 14 and 55.

7. Under each of the Articles mentioned in the foregoing paragraph, the Organization has taken decisions affecting non-member States.

I. GENERAL SURVEY

8. None of the decisions taken by the General Assembly or by the Security Council for the maintenance of international peace and security and involving non-member States contains explicit reference to Article 2 (6). In one case, a draft resolution which contained such a reference was later withdrawn (see paragraph 53 below).

9. Article 2 (6) was, however, expressly invoked in a letter dated 9 April 1946 from the representative of Poland requesting the inclusion of the Spanish question in the agenda of the Security Council. After referring to General Assembly resolution 32 (I) of 9 February 1946 and stating that "the activities of the Franco Government have ... caused international friction and endangered international peace and security", the letter continued: 1/

"In view of the foregoing, the situation in Spain must be considered not as an internal affair of that country but as a concern of all the United Nations. Article 2 of the Charter in paragraph 6 provides that the United Nations Organization shall insure that States not Members of the United Nations act in accordance with the principles of the Organization so far as may be necessary for the maintenance of international peace and security. The situation in Spain makes the application of this provision imperative."

10. References to Article 2 (6) have sometimes been made in the proceedings of United Nations organs in connexion with specific cases. Except in the case of the agenda item entitled "Observance in Bulgaria and Hungary of human rights and fundamental freedoms" (see paragraphs 50-52 below), where discussion of Article 2 (6)

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1/ S C, 1st yr., 1st Series, Suppl. No. 2, p. 55; annex 3 b (8/34).

was extensive, such references are incidental and throw little light on the application of the provision in that paragraph. 2/

11. Decisions of the General Assembly and the Security Council which may be said to bear upon the provisions of Article 2 (6) involved action or cessation of action (1) by Member States toward non-member States (2) by specific non-member States, or (3) by non-member States in general. These decisions affecting non-member States were made in connexion with questions of the peaceful settlement of disputes, the determination of threats to the peace and, in one case, the observance of human rights and fundamental freedoms. The decisions were based on those Articles which conferred specific powers on the two principal organs. In some cases, the Principles of the Charter were invoked. The action or cessation of action thus required of non-member States varied from case to case. The terminology used to identify the addressees of such decisions included the following: 3/ (1) "all Member and all other States"; (2) "all nations"; (3) "all States"; (4) "all States and all authorities"; (5) "all governments and authorities"; (6) "every State"; (7) "a State"; (8) "the States concerned"; (9) "the governments concerned" and (10) "the parties concerned".

2/ For instance, Article 2 (6) was mentioned by certain delegations in the course of the discussions on the question of admission of new Members. Thus, in connexion with a proposal for simultaneous admission of all applicants to membership, it was argued that such a proposal was not only incompatible with the terms of Article 4, but was also contrary to the principle of universality, which implied equal treatment for all; such a proposal would actually apply more lenient conditions to candidates for membership than would be applied under Article 2 (6) to non-member States not candidates for membership or, under Article 6, to Members of the United Nations. On the other hand, it was thought that where there was doubt merely as to the qualifications of a State, it would be better to vote in favour of admission, because admission to the United Nations might help to make that State conform to the Charter in its actions. Moreover, from a reading of Article 2 (6) dealing with non-member States, it could be inferred that the authors of the Charter had been aware of the disadvantages to the United Nations as a result of the absence from membership of some of the States of the world.

S C, 6th yr., 573rd mtg., Greece, p. 7.

G A, (III/2), Ad Hoc Pol. Com., 476th mtg., Uruguay, p. 299.

G A, (V), Plen., 318th mtg., Syria, p. 567.

G A, (VI), 1st Com., 496th mtg., Yugoslavia, p. 227.

G A, (VII), Annexes, a.i. 22, A/2400, Greece, p. 14.

G A, (VIII), Ad Hoc Pol. Com., 94th mtg., Bolivia, p. 40.

For other references to Article 2 (6), see paras. 13, 17, 23, 27 and 30 below.

3/ For examples of General Assembly resolutions, in addition to those treated in the Analytical Summary of Practice below, see in this Repertory under Articles 10 and 11.

For examples of Security Council decisions, in addition to those treated in the Analytical Summary of Practice below, see decisions taken on the Palestine question in connexion with which Jordan was one of the parties concerned. Appropriate references to these decisions taken up to the end of 1951 may be found in the Repertoire of the Practice of the Security Council 1946-1951, pp. 325-344. United Nations Publication, Sales No.: 1954.VIII.1.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Decisions taken by the Organization affecting non-member States with respect to the maintenance of international peace and security

1. Recommendations to, or in respect of, specific non-member States

a. THE SPANISH QUESTION 4/

12. The Spanish question was placed on the agenda of the Security Council at the request of the representative of Poland (see paragraph 9 above). The Council considered this question at its 34th to 39th and 44th to 49th meetings between 17 April and 26 June 1946.

13. The first phase of discussion centred on the question whether the activities of the Franco régime in Spain endangered international peace and security. In this connexion, draft resolutions were submitted which invoked Articles 39 and 41 or Article 34 as grounds for action by the Security Council. One of the arguments advanced was that Article 2 (6) imposed an obligation on the Organization to take appropriate steps. 5/ Against this argument, it was contended 6/ that Article 2 (6) was limited by Article 2 (7) which followed it immediately with the provision that nothing contained in the Charter authorized the United Nations to intervene in matters essentially within the domestic jurisdiction of any State; the nature of the régime in any given country was such a matter.

14. At the 39th meeting on 29 April 1946, the Council adopted a resolution under which it would

"make further studies in order to determine whether the situation in Spain has led to international friction and does endanger international peace and security, and if it so finds, then to determine what practical measures the United Nations may take."

To this end, the Council established a Sub-Committee on the Spanish question. In its report, 7/ the Sub-Committee stated that (1) in its opinion the Security Council could not, on the present evidence, make the determination required by Article 39 and (2) the present situation in Spain was a situation the continuance of which was in fact likely to endanger the maintenance of international peace and security. The Sub-Committee concluded that the Security Council was empowered by Article 36 (1) to recommend appropriate procedures or methods of adjustment, and recommended that, unless certain conditions were satisfied, the General Assembly adopt a resolution recommending that each Member of the United Nations terminate forthwith diplomatic relations with the Franco régime.

4/ For the submission of, and the main proceedings connected with, this question in the Security Council and in the General Assembly, see in this Repertory under Articles 34 and 11.

For the discussion of other aspects of this question, see in this Repertory under Articles 2 (7), 4, 12, 35, 36, 39, 40 and 41.

5/ S C, 1st yr., 1st Series, No. 2, 34th mtg., pp. 167 and 169.

6/ Ibid., p. 181.

7/ S C, 1st yr., 1st Series, Special Suppl., pp. 1-11, 8/75.

15. At the 49th meeting on 26 June 1946, the Security Council, having examined the Sub-Committee's report, decided

"to keep the situation in Spain under continuous observation and maintain it upon the list of matters of which it is seized in order that it will be at all times ready to take such measures as may become necessary to maintain international peace and security".

16. At the request of the delegations of Belgium, Czechoslovakia, Denmark, Norway and Venezuela, 8/ the item "Relations between Spain and the United Nations" was included in the agenda of the second part of the first session of the General Assembly. 9/

17. In the debate in First Committee, to which the item had been referred, Article 2 (6) was mentioned 10/ by a few delegations as a ground on which the Organization could take action with regard to Spain. There was also discussion on whether or not international peace and security was involved. Among the draft resolutions and amendments considered by a drafting sub-committee was an amendment offered by Colombia to a draft resolution submitted by Poland; the amendment was subsequently rejected by the Sub-Committee. It proposed 11/ that the General Assembly

"express its wish that the Government and people of Spain should seek and find the method of bringing into being, by peaceful means, within the shortest possible time and in accordance with the principles and purposes of the Charter of the United Nations, the new social and political conditions necessary to enable Spain to be admitted as a Member of the Organization".

18. Upon the recommendation of the First Committee, the General Assembly adopted, on 12 December 1946, resolution 39 (I), the operative part of which read:

"The General Assembly,

"Convinced that the Franco Fascist Government of Spain, which was imposed by force upon the Spanish people with the aid of the Axis Powers and which gave material assistance to the Axis Powers in the war, does not represent the Spanish people, and by its continued control of Spain is making impossible the participation of the Spanish people with the peoples of the United Nations in international affairs;

"Recommends that the Franco Government of Spain be debarred from membership in international agencies established by or brought into relationship with the United Nations, and from participation in conferences or other activities which may be arranged by the United Nations or by these agencies, until a new and acceptable government is formed in Spain.

8/ G A (I/2), 1st Com., pp. 351 and 352, annex 11 (A/BUR/45).

9/ At its 79th meeting on 4 November 1946, the Security Council resolved to remove the Spanish question from the list of matters of which the Council was seized and to place all the records and documents of the case at the disposal of the General Assembly. See in this Repertory under Article 12.

10/ G A (I/2), 1st Com., 35th mtg., p. 233; 36th mtg., p. 241.

11/ G A (I/2), 1st Com., p. 356, annex 11 e (A/C.1/102).

"The General Assembly,

"Further desiring to secure the participation of all peace-loving peoples, including the people of Spain, in the community of nations,

"Recommends that if, within a reasonable time, there is not established a government which derives its authority from the consent of the governed, committed to respect freedom of speech, religion and assembly and to the prompt holding of an election in which the Spanish people, free from force and intimidation and regardless of party, may express their will, the Security Council consider the adequate measures to be taken in order to remedy the situation;

"Recommends that all Members of the United Nations immediately recall from Madrid their Ambassadors and Ministers Plenipotentiary accredited there.

"The General Assembly further recommends that the States Members of the Organization report to the Secretary-General and to the next session of the Assembly what action they have taken in accordance with this recommendation."

19. At the second session of the General Assembly when the agenda item entitled "Relations of Members of the United Nations with Spain" was under consideration, a draft resolution 12/ submitted by Poland under which the Assembly would have recommended that the Security Council consider the Spanish question within one month and take adequate measures in conformity with Article 41 of the Charter was not put to the vote. The General Assembly, however, adopted resolution 114 (II), by which it expressed its confidence

"that the Security Council will exercise its responsibilities under the Charter as soon as it considers that the situation in regard to Spain so requires".

b. THE GREEK FRONTIER INCIDENTS QUESTION

i. Action taken by the Security Council 13/

20. The Greek frontier incidents question was first brought 14/ to the attention of the Security Council under Articles 34 and 35 (1) of the Charter by Greece.

21. By its resolution adopted at the 87th meeting on 19 December 1946, the Security Council established a Commission of Investigation under Article 34 of the Charter "to ascertain the facts relating to the alleged border violations along the frontier between Greece on the one hand and Albania, Bulgaria and Yugoslavia on the other". The Commission was empowered to call upon the Governments, officials and nationals of those countries for information relevant to its investigation. Later the Council set up a Subsidiary Group of the Commission to fulfil such functions as the Commission might prescribe. 15/

22. After the Commission of Investigation had submitted its report which contained recommendations stated to have been framed in the spirit of Chapter VI of the

12/ G A (II), 1st Com., p. 626, annex 20 a (A/C.1/259); G A (II), Plen., vol. II, pp. 1610-1612, annex 25 (A/479).

13/ See also in this Repertory under Articles 32, 34, 35, 36, 39 and 40.

14/ S C, 1st yr., 2nd Series, Suppl. No. 10, p. 169, annex 16 (S/203).

15/ S C resolution of 18 April 1947, S C, 2nd yr., No. 37, 131st mtg., pp. 799 and 800.

Charter, a number of draft resolutions 16/ were submitted to the Security Council, providing for such recommendations as those for the establishment of normal diplomatic relations between the Governments concerned, the settlement of controversies by the peaceful means mentioned in Article 33, the recall of foreign troops and military personnel from Greece, the conclusion by the Governments concerned of bilateral frontier conventions et cetera. These draft resolutions were rejected by the Council.

23. During the discussion, the argument was advanced 17/ that, in accordance with Article 2 (6), the Security Council must treat alike every State using force against the territorial integrity of another and that the main responsibility for ensuring that all States Members or non-members of the United Nations refrained from all threats to, and all breaches of, the peace rested with the Council.

24. After Greece had formally charged that there existed a "threat to the peace, breach of the peace or act of aggression" and had requested 18/ the Security Council to take this charge into consideration, the following draft resolutions were submitted to the Council. (1) An amended draft resolution 19/ submitted by Australia under which the Security Council would have determined that the situation on the northern borders of Greece constituted a threat to peace under Article 39, would have called upon the parties involved to cease all acts of provocation and would have directed, in accordance with Article 40, that the Governments concerned should at once enter into direct negotiations; (2) a draft resolution 20/ submitted by the United States under which the Security Council would have determined that support and assistance given by Albania, Bulgaria and Yugoslavia to the guerrillas fighting against the Greek Government constituted a threat to the peace within the meaning of Chapter VII, would have called upon the three States to cease and desist from rendering any further assistance to the guerrillas and to co-operate with Greece in the settlement of their disputes by peaceful means, and would have directed the Subsidiary Group to report to the Council on the compliance of Albania, Bulgaria and Yugoslavia with the above-mentioned provisions. These draft resolutions failed of adoption.

ii. Action taken by the General Assembly 21/

25. At the request of the delegation of the United States, the item entitled "Threats to the political independence and territorial integrity of Greece" was included in the agenda of the second session of the General Assembly. 22/ The General Assembly considered the item from the second to the sixth sessions inclusive and adopted the following resolutions thereon: 109 (II), 193 (III), 288 (IV), 382 (V) and 517 (VI). The provisions of resolutions 109 (II), 193 (III) and 288 (IV)

16/ S C, 2nd yr., No. 51, 147th mtg., S/391, pp. 1124-1126; No. 55, 153rd mtg., S/404, pp. 1254 and 1255; No. 69, 174th mtg., S/464, pp. 1731 and 1732.

17/ For texts of relevant statements, see S C, 2nd yr., No. 51, 147th mtg., Greece, p. 1126; United States, p. 1121.

18/ S C, 2nd yr., Suppl. No. 17, pp. 151-153, annex 42 (S/451).

19/ S C, 2nd yr., No. 79, 188th mtg., S/471, pp. 2093 and 2094.

20/ S C, 2nd yr., No. 74, 180th mtg., pp. 1910 and 1911, footnote S/486.

21/ See also in this Repertory under Articles 11 and 12.

22/ By a resolution adopted on 15 September 1947, the Security Council removed the Greek frontier incidents question from the list of matters of which the Council was seized and placed all records and documents in the case at the disposal of the General Assembly (S C, 2nd yr., No. 89, 202nd mtg., pp. 2401 and 2405).

are conveniently summarized in this Repertory under Article 11, annex II under the following headings: (1) Provisions recommending means for the settlement of questions relating to the maintenance of international peace and security, and (2) Provisions recommending the taking of specific measures.

26. The recommendations of the General Assembly to the Government of Greece on the one hand and the Governments of Albania, Bulgaria and Yugoslavia on the other, included provisions concerning the peaceful settlement of their disputes, establishment of normal diplomatic relations, conclusion or renewal of frontier conventions, voluntary repatriation of the refugees, etc. Albania, Bulgaria and Yugoslavia were asked to refrain from furnishing aid and assistance to the guerrillas fighting against the Greek Government. The General Assembly also recommended the taking of certain action by "all Members of the United Nations and all other States". 23/ In addition, a special committee was established to observe the compliance with the recommendations of the General Assembly by the four Governments concerned.

27. When, at the second session of the General Assembly, the item was referred to the First Committee for consideration, Albania 24/ and Bulgaria 25/ requested to be heard. A draft resolution was adopted 26/ by which the Committee inquired "of the representatives of Albania and Bulgaria if their Governments are prepared to agree to apply the principles and rules of the Charter in the settlement of the Greek question". In this connexion it was pointed out 27/ that non-member States which had asked to be heard would be enjoying an additional privilege if they were not bound by the same obligations as the Members of the United Nations.

28. After replies 28/ had been received from the two Governments concerned, the representatives of Czechoslovakia and the USSR submitted proposals providing for the participation of Albania and Bulgaria in the discussion of the Greek question. After rejection of these proposals, the First Committee adopted a resolution submitted by Belgium which, stated: 29/

23/ This wording appears only in G A resolution 193 (III). In resolutions adopted at subsequent sessions the following phrases appeared:

288 (IV): "Calls upon all States harbouring Greek nationals";

382 (V): "Urges all States harbouring the Greek children";

517 (VI): "Urges all countries harbouring Greek children".

24/ G A (II), 1st Com., p. 592, annex 15 c (A/C.1/192).

25/ G A (II), 1st Com., p. 590, annex 15 a (A/C.1/190).

26/ G A (II), 1st Com., 60th mtg., p. 12.

27/ Ibid., p. 10. For other references to Article 2 (6) in connexion with the obligations of Albania and Bulgaria, see G A (III/1), 1st Com., 181st mtg., pp. 368 and 369; G A (IV), 1st Com., 308th mtg., p. 117. It is to be noted that during the discussion it was also pointed out that no provision was made either in the Charter or in the rules of procedure of the Assembly for issuing an invitation to a non-member State. Some representatives considered that the Assembly should be guided by the spirit of Articles 32 and 35 because the Assembly and the Security Council should be guided by the same principles. G A (II), 1st Com., 60th mtg., p. 10.

28/ G A (II), 1st Com., pp. 594 and 595, annexes 15 f (A/C.1/197) and 15 g (A/C.1/198).

29/ G A (II), 1st Com., 62nd mtg., p. 31.

"The Governments of Albania and Bulgaria having failed to furnish a satisfactory reply to the request made to them by the First Committee, the latter has decided to hear the statements of the Bulgarian and Albanian delegations on the Greek question and requests them to place themselves at the disposal of the Committee in order to reply to any questions which may be put to them."

In response to this resolution, the representatives of Albania and Bulgaria informed 30/ the Committee that they accepted the invitation and were ready to state their views on the Greek question. Accordingly, the representatives of Albania and Bulgaria were invited to state their views at the 64th meeting of the Committee.

C. THE CORFU CHANNEL QUESTION 31/

29. By letter dated 10 January 1947, 32/ the United Kingdom submitted as a dispute under Article 35 the incidents in the Corfu Channel involving damage to two British ships by mines for which the United Kingdom alleged that the People's Republic of Albania was responsible.

30. The representative of the United Kingdom, when introducing the question before the Security Council 33/ invited the Council to consider also the wider implication of the case because, in his opinion, international peace and security could not be maintained for long where incidents threatened death to innocent men and destruction to property of friendly nations. He invoked Article 2 (6) and suggested that the Security Council should retain watchful interest in the negotiations for settlement of the dispute. The representative of Albania, having been invited by the Council to participate in its proceedings, 34/ stated that his Government had not laid the mines and had no knowledge of the laying of mines.

31. At its 114th meeting on 27 February, the Security Council adopted a resolution establishing a sub-committee to examine all the available evidence concerning the incidents and to make a report to the Council on the facts of the case as disclosed by such evidence. The resolution further provided that: 35/

"The sub-committee is empowered to request further information as it deems necessary from the parties to the dispute, and the representatives of the United Kingdom and Albania are requested to give every assistance to the sub-committee in its work."

32. After the Sub-Committee had submitted its report 36/ to the Council, a draft resolution 37/ submitted by the United Kingdom concerning the settlement of the dispute was not adopted and another draft resolution 38/ submitted by Poland, invoking Article 33, was later withdrawn. 39/

30/ G A (II), 1st Com., p. 597, annexes 15 k (A/C.1/203) and 15 l (A/C.1/204).
31/ See also in this Repertory under Articles 27, 32, 33, 34, 35, 36, 39 and 40.
32/ S C, 2nd yr., Suppl. No. 3, pp. 36-46, annex 8 (S/247).
33/ S C, 2nd yr., No. 15, 107th mtg., p. 306.
34/ See also in this Repertory under Article 32.
35/ S C, 2nd yr., No. 18, 111th mtg., pp. 364 and 365.
36/ S C, 2nd yr., Suppl. No. 10, p. 77, annex 22 (S/300).
37/ S C, 2nd yr., No. 29, 122nd mtg., pp. 608 and 609.
38/ Ibid., p. 600.
39/ For discussion of these draft resolutions, see in this Repertory under Article 33.

33. At the 127th meeting of the Council on 9 April 1947, the President, in connexion with the question of referring the dispute to the International Court of Justice 40/ stated: 41/

"as Albania is not a Member of the United Nations, it could not be compelled to appear before the International Court of Justice. However, since its acceptance of the obligations of Members of the United Nations, as contained in the Council's invitation to it to participate in a discussion of this case, Albania is now, like any Member of the United Nations, obliged to comply with the provisions both of the Charter and of the Statute of the International Court of Justice."

At the same meeting, the Council decided, by 8 votes to none, with 2 abstentions, to recommend "that the United Kingdom and the Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court." 42/

34. By letter dated 22 May 1947, the Government of the United Kingdom presented to the International Court of Justice an application against the Government of Albania in regard to the incidents in the Corfu Channel. On 25 March 1948, the Court gave its decision 43/ on the Preliminary Objection filed by the Albanian Government. Immediately after the delivery of the decision, the Court was notified of a Special Agreement entered into by the two Governments concerned and "drawn up as a result of the Resolution of the Security Council of the 9th April, 1947, for the purpose of submitting to the International Court of Justice" 44/ certain questions relating to the Corfu Channel incidents. On 9 April 1949, the Court delivered its judgement on the merits of the Corfu Channel case. 45/

d. COMPLAINT OF HOSTILE ACTIVITIES OF THE GOVERNMENT OF THE UNION OF SOVIET
SOCIALIST REPUBLICS AND THE GOVERNMENTS OF BULGARIA, HUNGARY, ROMANIA
AND ALBANIA, AS WELL AS THE GOVERNMENTS OF CZECHOSLOVAKIA AND
POLAND, AGAINST YUGOSLAVIA 46/

35. The delegation of Yugoslavia, in its explanatory memorandum, 47/ dated 19 November 1951, accompanying the request for the inclusion of the above-mentioned item in the agenda of the sixth session of the General Assembly, invoked Article 10 and stated that the hostile activities of the named seven Governments against Yugoslavia were creating a situation endangering the maintenance of international peace.

40/ A draft resolution to this effect was submitted by the United Kingdom (S C, 2nd yr., No. 32, 125th mtg., pp. 685 and 686).

41/ S C, 2nd yr., No. 34, 127th mtg., p. 726.

42/ *Ibid.*, pp. 726 and 727.

43/ Corfu Channel Case, I C J, *Reports* 1947, p. 15 *et seqq.*

44/ Corfu Channel Case, I C J, *Reports* 1948, p. 54.

45/ *Ibid.*, p. 4, *et seqq.*

46/ See also in this Repertory under Articles 10, 11 and 14.

47/ G A (VI), annexes, a.i. 68, pp. 1 and 2, A/1946.

36. In the Ad Hoc Political Committee to which the item was referred, Yugoslavia submitted a draft resolution 48/ concerning the settlement of the question. During the discussion 49/ it was maintained, on the one hand, that the General Assembly had the right and duty under Articles 10, 11 and 14 to consider the Yugoslav complaint and that no Government could refuse to act in accordance with the spirit of the Charter. On the other hand, it was stated that the draft resolution submitted by Yugoslavia should be rejected since the complaint was groundless; that the action of the delegation of Yugoslavia should be condemned as being contrary to peace and security in the Balkans.

37. Upon the recommendation of the Ad Hoc Political Committee 50/ the General Assembly adopted resolution 509 (VI) under which, after quoting the provisions of Articles 1 (2) and 14, the Assembly recommended that the Governments concerned (Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Romania, the USSR and Yugoslavia)

"(a) Conduct their relations and settle their disputes in accordance with the spirit of the United Nations Charter;

"(b) Conform in their diplomatic intercourse with the rules and practices which are customary in international relations;

"(c) Settle frontier dispute by means of mixed frontier commissions or other peaceful means of their choice."

e. THE PALESTINE QUESTION 51/

38. Of the resolutions adopted by the Security Council and the General Assembly in connexion with the Palestine question, the following resolution, under which a non-member, Jordan, was called upon to take certain actions, is one of several.

39. At the 642nd meeting on 24 November 1953, the Security Council adopted a resolution which provided, inter alia, that the Council

"Takes note of the fact that there is substantial evidence of crossing of the demarcation line by unauthorized persons, often resulting in acts of violence, and requests the Government of Jordan to continue and strengthen the measures which it is already taking to prevent such crossings;

"Recalls to the Governments of Israel and Jordan their obligations under Security Council resolutions and the General Armistice Agreement to prevent all acts of violence on either side of the demarcation line;

"Calls upon the Governments of Israel and Jordan to ensure the effective co-operation of local security forces;

"Reaffirms that it is essential, in order to achieve progress by peaceful means towards a lasting settlement of the issues outstanding between them, that the parties abide by their obligations under the General Armistice Agreement and the resolutions of the Security Council;

48/ G A (VI), annexes. a.i. 68, p. 3, A/AC.53/L.10/Rev.1.

49/ For texts of relevant statements, see G A (VI), Ad Hoc Pol. Com., 8th to 14th mtgs. inclusive, pp. 39-73.

50/ G A (VI), annexes, a.i. 68, pp. 3 and 4, A/1997.

51/ See also in this Repertory under Articles 12, 32, 33, 35, 39 and 40.

"Emphasizes the obligation of the Governments of Israel and Jordan to co-operate fully with the Chief of Staff of the Truce Supervision Organization;"

2. Recommendations to non-member States in general 52/

a. RECOMMENDATIONS INVOLVING THE PRINCIPLES OF THE CHARTER IN GENERAL:
GENERAL ASSEMBLY RESOLUTIONS 290 (IV), 377 (V),
503 (VI) AND 703 (VII)

40. The General Assembly has adopted a number of resolutions which made recommendations to both Member and non-member States concerning the maintenance of international peace and security and referred explicitly to the Principles of the Charter.

41. In its resolution 290 (IV), entitled "Essentials of peace", the General Assembly addressed certain recommendations to "every nation" and others to "every Member"; declaring that disregard of the Principles of the Charter was primarily responsible for the continuance of international tension, it called upon "every nation",

"2. To refrain from threatening or using force contrary to the Charter;

"3. To refrain from any threats or acts, direct or indirect, aimed at impairing the freedom, independence or integrity of any State, or at fomenting civil strife and subverting the will of the people in any State;

"4. To carry out in good faith its international agreements;

"5. To afford all the United Nations bodies full co-operation and free access in the performance of the tasks assigned to them under the Charter;

"6. To promote, in recognition of the paramount importance of preserving the dignity and worth of the human person, full freedom for the peaceful expression of political opposition, full opportunity for the exercise of religious freedom and full respect for all the other fundamental rights expressed in the Universal Declaration of Human Rights;

"7. To promote nationally and through international co-operation, efforts to achieve and sustain higher standards of living for all peoples;

"8. To remove the barriers which deny to peoples the free exchange of information and ideas essential to international understanding and peace;

".....

"11. To settle international disputes by peaceful means and to co-operate in supporting United Nations efforts to resolve outstanding problems;

"12. To co-operate to attain the effective international regulation of conventional armaments; and

52/ See also in this Repertory under Article 11, annex IV.

"13. To agree to the exercise of national sovereignty jointly with other nations to the extent necessary to attain international control of atomic energy which would make effective the prohibition of atomic weapons and assure the use of atomic energy for peaceful purposes only."

42. By resolution 377 (V), entitled "Uniting for peace", the General Assembly recalled resolution 290 (IV), established a Peace Observation Commission to "observe and report on the situation in any area where there exists international tension the continuance of which is likely to endanger the maintenance of international peace and security", and recommended "to all governments and authorities that they co-operate with the Commission and assist it in the performance of its functions;". Under the same resolution the Assembly also established a Collective Measures Committee to study and make a report to the Security Council and to the General Assembly on methods which might be used to strengthen international peace and security in accordance with the Purposes and Principles of the Charter, taking account of collective self-defence and regional arrangements.

43. At both its sixth and seventh sessions, the General Assembly adopted resolutions on the methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter. By resolution 503 (VI), the General Assembly, reaffirming its desire expressed in resolution 377 A (V), invited

"States not Members of the United Nations to take note of the report of the Collective Measures Committee and consider ways and means in the economic as well as in other fields whereby they could contribute most effectively to collective measures undertaken by the United Nations in accordance with the Purposes and Principles of the Charter;".

By resolution 703 (VII), the General Assembly recommended to State Members, and invited States not Members of the United Nations:

"(a) To give careful consideration to the reports of the Collective Measures Committee;

"(b) To continue and intensify their efforts to carry out the recommendations of the 'Uniting for peace' resolution and of resolution 503 (VI);

"(c) To keep the Collective Measures Committee currently informed of the progress they are making in this respect;".

b. RECOMMENDATIONS INVOLVING SPECIFIC PRINCIPLES OF THE CHARTER: GENERAL ASSEMBLY RESOLUTIONS 291 (IV), 378 (V), 498 (V), 500 (V) AND 707 (VII)

44. The Principles of the Charter referred to in the following resolutions are those stated in Article 2 (4-5).

45. By resolution 291 (IV), entitled "Promotion of the stability of international relations in the Far East", the General Assembly, after citing the provisions of Article 2 (4) in the preamble, called upon all States

"1. To respect the political independence of China and to be guided by the Principles of the United Nations in their relations with China;

"2. To respect the right of the people of China, now and in the future, to choose freely their political institutions and to maintain a government independent of foreign control;

"3. To respect existing treaties relating to China;

"4. To refrain from (a) seeking to acquire spheres of influence or to create foreign-controlled régimes within the territory of China; (b) seeking to obtain special rights or privileges within the territory of China."

46. By resolution 378 (V), entitled "Duties of States in the event of the outbreak of hostilities", the General Assembly, having affirmed "the Principles embodied in the Charter which require that the force of arms... shall not be used against the territorial integrity or political independence of any State", recommended that a State which had become engaged in armed conflict with another State or States take certain actions such as "to bring the armed conflict to an end at the earliest possible moment", to proclaim its readiness "to discontinue all military operations and withdraw its military forces which have invaded the territory or territorial water of another State or crossed a demarcation line", etc.

47. By resolution 498 (V), entitled "Intervention of the Central People's Government of the People's Republic of China in Korea", the General Assembly called upon "all States and authorities to continue to lend every assistance to the United Nations action in Korea;" and further called upon "all States and authorities to refrain from giving any assistance to the aggressors in Korea;".

48. By resolution 500 (V), entitled "Additional measures to be employed to meet the aggression in Korea", the General Assembly recommended that every State:

"(a) Apply an embargo on the shipment to areas under the control of the Central People's Government of the People's Republic of China and of the North Korean authorities of arms, ammunition and implements of war, atomic energy materials, petroleum, transportation materials of strategic value, and items useful in the production of arms, ammunition and implements of war;

"(b) Determine which commodities exported from its territory fall within the embargo, and apply controls to give effect to embargo;

"(c) Prevent by all means within its jurisdiction the circumvention of controls on shipments applied by other States pursuant to the present resolution;

"(d) Co-operate with other States in carrying out the purposes of this embargo;

"(e) Report to the Additional Measures Committee, within thirty days and thereafter at the request of the Committee, on the measures taken in accordance with the present resolution;".

49. In resolution 707 (VII), entitled "Complaint by the Union of Burma regarding aggression against it by the Government of the Republic of China", 53/ the General Assembly used the following wording:

53/ See also resolution 717 (VIII).

"3. Requests all States to respect the territorial integrity and political independence of the Union of Burma in accordance with the Principles of the Charter;

".....

"5. Urges all States:

"(a) To afford the Government of the Union of Burma on its request all the assistance in their power to facilitate by peaceful means the evacuation of these foreign forces from Burma; and

"(b) To refrain from furnishing any assistance to these forces which may enable them to remain in the territory of the Union of Burma or to continue their hostile acts against that country;"

B. The discussion of Article 2 (6) in connexion with the agenda item on the observance in Bulgaria and Hungary of human rights and fundamental freedoms 54/

50. During the consideration of the agenda item on the observance of human rights and fundamental freedoms in Bulgaria and Hungary at the second part of the third session of the General Assembly, several delegations invoked Article 2 (6) and other relevant provisions of the Charter in a debate on the competence or lack of competence of the Organization to discuss the question and on the obligations of non-member States under the Charter. 55/

51. The arguments relating to the provisions of Article 2 (6) advanced in support of the contention that the Organization was competent to discuss the question were as follows:

(1) In dealing with the item under consideration, the (Ad Hoc Political) Committee should take into consideration Article 2 (6) which proclaimed that the Organization should ensure that States which were not Members of the United Nations act in accordance with its principles, thus establishing the moral obligation and legal right of the United Nations to ensure the observance of these principles.

(2) Article 2 (6) could not be implemented unless the United Nations were permitted to watch over the actions and conduct of governments, and no State could hide behind the concept of absolute national sovereignty as though that were an insuperable barrier.

54/ For historical background and discussion of the various aspects of the item, see in this Repertory under Article 2 (7), 11, 55 and 56.

55/ For texts of relevant statements, see G A (III/2), Plen., 189th mtg.: Bolivia, pp. 17 and 18; Poland, p. 15; 190th mtg.: Uruguay, p. 26; 202nd mtg.: Cuba, pp. 247 and 248.

G A (III/2), General Com., 58th mtg.: Poland, pp. 11 and 37; 59th mtg.: Bolivia, pp. 25 and 26.

G A (III/2), Ad Hoc Pol. Com., 34th mtg.: Philippines, p. 61; Poland, p. 62; 35th mtg.: Cuba, p. 78; Poland, p. 80; 38th mtg.: Chile, p. 131; Yugoslavia, pp. 126 and 127; 41st mtg.: Argentina, pp. 164 and 165.

For reference to similar arguments advanced in the Economic and Social Council in regard to the item concerning the infringement of trade union rights, see in this Repertory under Article 62 (2).

(3) Respect for obligations under international treaties was one of the fundamental principles of the Organization and essential for peace and security in relations between States. ^{56/}

(4) Articles 1 (2) and 55 required all nations to establish "peaceful and friendly relations ... based on respect of the principle of equal rights and self-determination of peoples". That principle was one of the foundations of world peace and those who encroached upon it were in fact guilty of endangering the peace.

52. Against the foregoing arguments, the following contentions were made:

(1) Under Article 2 (6), the Organization had to ensure that non-member States act in accordance with its principles so far as might be necessary for the maintenance of international peace and security. It could not be claimed that international peace and security were threatened by the alleged violations of human rights and of the provisions of the peace treaties by the Governments of Bulgaria and Hungary. It was, therefore, perfectly clear that the Organization was not bound to apply the provisions of Article 2 (6) in the case of Bulgaria and Hungary.

(2) Since the Charter was a multilateral treaty, the absence of an obligation on the part of a State which was not a Member of the Organization derived not only from the legal principle that no State could be bound by a treaty concluded by other States but also from a comparison between Article 2 (6) of the Charter and Article 17 of the Covenant of the League of Nations which contained a similar provision. It had been possible to maintain that Article 17 of the Covenant was worded in such a way that it imposed on States not Members of the League of Nations the legal obligation not to resort to war; on the other hand, Article 2 (6) of the Charter had obviously been worded in such a way that it did not impose any legal obligation on non-member States, even with respect to international peace and security.

53. When the item was under consideration in the Ad Hoc Political Committee, Cuba submitted a draft resolution ^{57/} proposing the establishment of a special committee "to elucidate the acts alleged to have been committed in Bulgaria and Hungary against human rights and the fundamental freedoms". This draft resolution contained the following provisions:

"5. Considering that the violation of the principles set forth in the Preamble and in the Purposes of the United Nations Charter referred to above, not only tends to destroy the dignity of the human person which the United Nations has undertaken to respect and promote, but by unleashing religious persecution, destroys the freedom of the human person to worship God in accordance with his conscience - without discrimination as to religion - which by rousing religious hatred has in the past given rise to bloody wars and has already led to a situation which, if it continues, may endanger international peace.

^{56/} An amendment to a draft resolution submitted by Bolivia was offered containing provisions to this effect. The amendment was rejected by the Ad Hoc Political Committee by 10 votes to 10, with 32 abstentions. See G A (III/2), Ad Hoc Pol. Com., Annexes, p. 8, A/AC.24/53; ibid., 41st mtg., p. 173.

^{57/} G A (III/2), Ad Hoc Pol. Com., Annexes, pp. 2 and 3, A/AC.24/48 and Corr.1.

"The General Assembly,

"Exercising the powers invested in it by Articles 10, 11, 13, 14, 34 and 35 of the Charter of the United Nations, and

"Bearing in mind the provisions of Article 2 paragraphs 5, 6 and 7 and Article 105 of the same text,".

The later submission by Cuba and Australia of a joint amendment to a Bolivian draft resolution 58/ entailed the withdrawal of the draft resolution submitted by Cuba.

54. The text of resolution 272 (III), entitled "Observance in Bulgaria and Hungary of human rights and fundamental freedoms", as finally adopted by the General Assembly made no mention of international peace and security or of Article 2 (6).

58/ Ibid., p. 7, A/AC.24/51/Corr.1.

ARTICLE 2 (7)

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TEXT OF ARTICLE 2 (7)

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

INTRODUCTORY NOTE

1. The present study deals only with cases in which objections to United Nations action were raised on the grounds of Article 2 (7). Those cases -- 23 in all -- in which such objections led to a discussion of the domestic jurisdiction clause are treated in detail. Cases in which resolutions were adopted over such objections without discussion of the domestic jurisdiction clause, are listed in an annex.
2. Thus, the present study does not cover proceedings in which objections on the grounds of the domestic jurisdiction clause were raised but not discussed, and in which no resolutions were adopted. Nor does it cover decisions in connexion with which no objections based on Article 2 (7) were raised, although such decisions constitute, at least by implication, an affirmation of the competence of the Organization, and may therefore have a bearing on the meaning of Article 2 (7).
3. In the majority of the twenty-three cases treated in detail the discussion of the problem of domestic jurisdiction was extensive and touched upon many constitutional questions raised by the wording of Article 2 (7). With one exception, 1/ the resolutions adopted, however, made no mention of Article 2 (7) nor of the problem of domestic jurisdiction. None of them expressly asserted that the grounds for action set forth in them removed the matter from the operation of Article 2 (7). Many of the resolutions, however, set forth as grounds for action some of the considerations advanced during the discussions as excepting a question from the application of Article 2 (7).
4. The study is divided into two parts entitled, respectively, "General Survey" and "Analytical Summary of Practice". It has been necessary, for the sake of clarity and in order to avoid repetition, to organize the present study along the lines described below, which are somewhat different from those generally followed in the Repertory.
5. The General Survey deals seriatim with the above-mentioned twenty-three cases. The cases are grouped in four sections:
 - A. General Assembly;
 - B. General Assembly and Economic and Social Council;

1/ See para. 182. However, an advisory opinion (see paras. 334 and 355) and an order (see paras. 336-338) of the International Court of Justice deal with the problem of domestic jurisdiction.

C. Security Council;

D. International Court of Justice.

6. Within these sections of the General Survey a subsection is devoted to each case. Each subsection describes 2/ the proceedings and quotes or summarizes the decisions which appear relevant to the problem of domestic jurisdiction. It sets forth the objections to United Nations action raised on the grounds of Article 2 (7). The subsection lists the constitutional questions concerning the interpretation of Article 2 (7) which have arisen in the debates on the case to which it is devoted. Finally, in respect of each constitutional question listed, it indicates between brackets the paragraphs of the Analytical Summary of Practice in which the arguments relating to such constitutional questions are summarized.

7. The Analytical Summary of Practice deals seriatim with the constitutional questions concerning the interpretation of Article 2 (7) which have arisen in connexion with the debates on the twenty-three cases described in the General Survey. These questions are grouped in four sections entitled:

A. The term "to intervene" appearing in Article 2 (7);

B. The expression in Article 2 (7): "matters which are essentially within the domestic jurisdiction of any state"; "but this principle shall not prejudice the application of enforcement measures under Chapter VII";

C. The last phrase of Article 2 (7);

D. Procedures by which Article 2 (7) was invoked.

8. Within these sections, a subsection is devoted to each constitutional question. The subsections list the cases in connexion with which the constitutional questions arose, set forth the decisions taken in connexion with these cases and refer to the paragraphs of the General Survey in which those decisions are dealt with. Finally, each subsection summarizes the arguments relevant to the particular question under consideration, indicating for each argument the cases in which it was advanced and the Official Records from which it is summarized. For the sake of brevity and to avoid confusion between agenda items with like titles, the cases are referred to not by name but by the numbers appearing in the table attached at the end of the present study. For the convenience of the reader, the table folds out.

9. It should be emphasized that the Analytical Summary of Practice does not purport to give an exhaustive analysis of Article 2 (7). Of all the constitutional questions posed by that provision, it surveys only those which arose in connexion with the practice of United Nations organs. 3/ Of all the arguments relevant to those questions, it summarizes only such arguments as were actually advanced during the debates of those organs.

2/ The proceedings and the decisions taken in two of the twenty-three cases are fully described in the study on Article 73. For those two cases the General Survey merely refers to the relevant sections of that study (see paras. 81-87).

3/ The period covered by this study is as follows: for the General Assembly, the first to the eighth sessions, inclusive; for the Economic and Social Council, the tenth to the eighteenth sessions, inclusive; for the Security Council, the first to the eighth years, inclusive (32nd - 624th meetings), and for the International Court of Justice, the years 1950 and 1951.

I. GENERAL SURVEY

10. The organization of the General Survey and its relation to the Analytical Summary of Practice are described above in the Introductory Note (see paragraphs 4 to 9). A table appearing at the end of the present study indicates the paragraphs of the Analytical Summary of Practice relevant to each of the cases studied in the General Survey and the reference numbers by which these cases are mentioned in the Analytical Summary of Practice. The reference number of each case is also indicated in the heading of the subsection of the General Survey devoted to the case.

A. General Assembly

11. This section deals with eleven cases, numbered 1 to 11 inclusive, which were discussed by the General Assembly during its first eight sessions.

*Case No. 1**Relations of Member States with Spain*

12. The question of the relations of Member States with Spain was discussed by the General Assembly at the two parts of its first session, and at its second, third and fifth sessions. At the sixth session, a particular aspect of the question was considered. The action taken at those sessions is studied below.

a. RESOLUTION 32 (I)

13. At the first part of its first session the General Assembly adopted ^{4/} at its 26th plenary meeting on 9 February 1946, resolution 32 (I) recalling "that the San Francisco Conference adopted a resolution ^{5/} according to which paragraph 2 of Article 4 ... of the ... Charter 'cannot apply to States whose regimes have been installed with the help of armed forces of countries which have fought against the United Nations so long as these regimes are in power'". The resolution also noted that at the Potsdam Conference the USSR, the United Kingdom and the United States had stated ^{6/} that they would not support a request for admission to the United Nations of the present Spanish Government. Finally, in "endorsing these two statements", the resolution recommended that "the Members of the United Nations should act in accordance with the letter and the spirit of these statements in the conduct of their future relations with Spain".

14. Though it does not appear that the problem of domestic jurisdiction was raised during the discussions which led to the adoption of resolution 32 (I), this resolution was recalled in the subsequent resolutions dealing with the question of relations of Member States with Spain.

^{4/} The official record of the 26th plenary meeting states that the resolution was "adopted by 46 votes with 2 abstentions". However, the results of the roll-call vote appearing in that record indicate that there were 46 votes in favour, 2 against and no abstentions (G A (I/1), Plen., 26th mtg., p. 361).

^{5/} Documents of the United Nations Conference on International Organization, vol. 6, pp. 127 and 136, doc. 1167, I/10.

^{6/} For the statement made at the Potsdam Conference, see doc. 123, Senate, 81st Congress, 1st Session, U.S. Government Printing Office, Washington, 1950, p. 45.

b. RESOLUTION 39 (I)

15. By a letter 7/ dated 31 October 1946 the representatives of five Member States requested that "as the question of the attitude of the United Nations towards the régime in Spain is of great concern to the Members of the United Nations" an item concerning the relations between Spain and the United Nations should be included in the agenda of the second part of the first session as a separate item. The question was included 8/ without debate in the agenda of the second part of the first session.

16. During the consideration of the item, it was recalled that the Sub-Committee established by the Security Council on 29 April 1946 (see paragraphs 233-245), had found that, although the continuance of the situation in Spain was likely to endanger the maintenance of international peace, it did not constitute an actual threat to the peace in the meaning of Chapter VII of the Charter. Hence, it was contended 9/, the question of the form and nature of the Spanish Government fell essentially within Spain's domestic jurisdiction. Article 2 (7), therefore, prohibited the General Assembly from exerting pressure in order to bring about a change of régime in that State. In particular, the Assembly was debarred from recommending that Member States should sever diplomatic relations with Spain or even recall their Ambassadors and Ministers Plenipotentiary from Madrid. 10/ Furthermore, such a recommendation would constitute intervention also in the domestic jurisdiction of the Member State to which it would be addressed. 11/ Those contentions were disputed by some representatives. The arguments for and against, which are set out in the Analytical Summary of Practice related to the following questions:

Whether a recommendation constitutes intervention (paragraph 359);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

17. In spite of the objections raised on the grounds of Article 2 (7) the General Assembly, at its 59th plenary meeting on 12 December 1946, adopted 12/ resolution 39 (I) by 34 votes to 6, with 13 abstentions.

18. The preamble to that resolution recalled resolution 32 (I) and the decisions concerning Spain which had been taken at the San Francisco and Potsdam Conferences (see paragraph 13). After assuring the Spanish people of the sympathy of the United Nations, it also recalled that the Sub-Committee established by the Security Council on 29 April 1946 had "found unanimously [that] ... 'the Franco régime is a fascist régime ..., [that during the war] Franco ... gave very substantial aid to the enemy Powers ... [and was] a guilty party with Hitler and Mussolini in the conspiracy to wage war ...'".

7/ G A (I/2), 1st Com., pp. 351 and 352, annex 11 (A/BUR/45).

8/ G A (I/2), Plen., 46th mtg., p. 925. The General Assembly referred the question to the First Committee.

9/ G A (I/2), Plen., 56th mtg., p. 1188; 1st Com., 36th mtg., p. 242; 37th mtg., pp. 247 and 248.

10/ G A (I/2), Plen., 56th mtg., pp. 1182, 1187 and 1188; 1st Com., 36th mtg., p. 235; 37th mtg., pp. 252 and 253.

11/ G A (I/2), 1st Com., 43rd mtg., p. 295.

12/ G A (I/2), Plen., 59th mtg., p. 1222.

19. The first section of the operative part recommended "that the Franco Government of Spain be debarred from membership in international agencies established by or brought into relationship with the United Nations, and from participation in conferences or other activities which may be arranged by the United Nations ...".

20. The second and last section of the operative part read:

"The General Assembly,

"Further, desiring to secure the participation of all peace-loving peoples, including the people of Spain, in the community of nations,

"Recommends that if, within a reasonable time, there is not established a government which derives its authority from the consent of the governed, committed to respect freedom of speech, religion and assembly and to the prompt holding of an election in which the Spanish people, free from force and intimidation and regardless of party, may express their will, the Security Council consider the adequate measures to be taken in order to remedy the situation;

"Recommends that all Members of the United Nations immediately recall from Madrid their Ambassadors and Ministers plenipotentiary accredited there. [13]

"The General Assembly further recommends that the States Members of the Organization report to the Secretary-General and to the next session of the Assembly what action they have taken in accordance with this recommendation."

21. The resolution made no reference to any specific provision of the Charter or to the objections which had been raised on the grounds of Article 2 (7).

C. RESOLUTION 114 (II)

22. At its 91st plenary meeting the General Assembly, without discussion, included 14 in the agenda of its second session the question of the relations of Member States with Spain and referred it to the First Committee. The question had been placed on the provisional agenda in accordance with the last paragraph of resolution 39 (I).

23. At its 107th meeting, the First Committee, by 29 votes to 6 with 20 abstentions, adopted 15 a draft resolution, consisting of three paragraphs, which it submitted to the General Assembly.

24. At its 118th plenary meeting on 17 November 1947, the General Assembly, by 36 votes to 5 with 12 abstentions, adopted 16 the first and third paragraphs of that draft resolution which became resolution 114 (II). The text read:

"Whereas the Secretary-General in his annual report has informed the General Assembly of the steps taken by the States Members of the Organization in pursuance of its recommendations of 12 December 1946, [Resolution 39 (I)]

13/ The First Committee had rejected by a vote of 20 to 20, with 10 abstentions, a proposal recommending that Member States should "refuse to maintain diplomatic relations with the present Spanish régime" (G A (I/2), 1st Com., 43rd mtg., p. 301, and *ibid.*, pp. 358-362, annex 11 k (A/C.1/128)).

14/ G A (II), Plen., vol. I, 91st mtg., p. 299.

15/ G A (II), 1st Com., 107th mtg., p. 431.

16/ G A (II), Plen., vol. II, 118th mtg., p. 1096.

"The General Assembly

"Expresses its confidence that the Security Council will exercise its responsibilities under the Charter as soon as it considers that the situation in regard to Spain so requires."

25. The second paragraph of the Committee's draft resolution failed to obtain the required two-thirds majority in plenary 17/ and was therefore rejected. That paragraph read:

"Reaffirms its resolution 39 (I) ... concerning relations of Members of the United Nations with Spain;" 18/

d. ACTION TAKEN AT THE THIRD SESSION

26. At the request of the representative of Poland, the Spanish question was included in the agenda of the second part of the third session of the General Assembly and referred to the First Committee. There was no debate on the matter of inclusion.

27. During the consideration of the item in the Committee, the last section of the operative part of resolution 39 (I) was criticized as constituting intervention in domestic jurisdiction. 19/ The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a recommendation constitutes intervention (paragraph 359);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

28. At its 262nd meeting on 7 May 1949, the First Committee, by 25 votes to 16, with 16 abstentions, adopted 20/ a draft resolution 21/ the operative part of which read:

"The General Assembly,

".

"Decides, without prejudice to the declarations contained in ... resolution 39 (I), to leave Member States full freedom of action as regards their diplomatic relations with Spain."

29. In the General Assembly the draft resolution failed 22/ to obtain the required two-thirds majority and was therefore rejected at the 214th plenary meeting on 16 May 1949.

17/ Ibid. There were 29 votes in favour, 16 against and 8 abstentions.

18/ GA (II), Plen., vol. II, pp. 1610-1612, annex 25 (A/479), para. 5.

19/ GA (III/2), 1st Com., 258th mtg., p. 186; 259th mtg., p. 205; 262nd mtg., p. 237.

20/ GA (III/2), 1st Com., 262nd mtg., p. 240.

21/ GA (III/2), Plen., Annexes, pp. 58-61, A/852.

22/ GA (III/2), Plen., 214th mtg., p. 501. There were 26 votes in favour, 15 against and 16 abstentions.

30. The Assembly, at the same meeting, also rejected 23/ a Polish draft resolution 24/ which, recommended that all Member States should cease to export arms, ammunition and strategic material to Spain and should refrain from entering into any agreements with the Franco régime.

e. RESOLUTION 386 (V)

31. By letters 25/ dated 2 and 18 August 1950, respectively, the representatives of the Dominican Republic and Peru requested the Assembly to reconsider the question of the relations of Member States with Spain. At its 285th plenary meeting, the Assembly, by 45 votes to 9 with 2 abstentions, included 26/ the question in the agenda of its fifth session. No objection to the Assembly's action was raised on the grounds of Article 2 (7).

32. During the discussion of the question, the last section of the operative part of resolution 39 (I) was again criticized as constituting intervention in domestic jurisdiction. 27/

33. At its 304th plenary meeting on 4 November 1950, the General Assembly adopted 28/ resolution 386 (V) by 38 votes to 10, with 12 abstentions.

34. The preamble to that resolution noted that "The establishment of diplomatic relations and the exchange of Ambassadors and Ministers with a government does not imply any judgment upon the domestic policy of that government". It also stated that the specialized agencies should be free to decide for themselves whether Spain should be allowed to participate in their work.

35. The operative part read:

"The General Assembly,

".

"Resolves:

"1. To revoke the recommendation for the withdrawal of Ambassadors and Ministers from Madrid, contained in General Assembly resolution 39 (I) of 12 December 1946;

"2. To revoke the recommendation intended to debar Spain from membership in international agencies established by or brought into relationship with the United Nations, which recommendation is a part of the same resolution adopted by the General Assembly in 1946 concerning relations of Members of the United Nations with Spain."

23/ G A (III/2), Plen., 214th mtg., p. 504. The draft resolution was rejected by 40 votes to 6, with 7 abstentions.

24/ G A (III/2), Plen., Annexes, pp. 84 and 85, A/860.

25/ G A (V), Annexes, a.i. 62, pp. 1 and 2, A/1310 and A/1328.

26/ G A (V), Plen., vol. I, 285th mtg., para. 54. The Assembly referred the question to the Ad Hoc Political Committee.

27/ G A (V), Plen., vol. I, 304th mtg., para. 86; Ad Hoc Pol. Com., 25th mtg., para. 31; 27th mtg., para. 11; 28th mtg., para. 44.

28/ G A (V), Plen., 304th mtg., para. 124.

36. The resolution made no mention of the criticisms which had been levelled at resolution 39 (I) on the grounds of Article 2 (7).

f. ACTION TAKEN AT THE SIXTH SESSION

37. The Spanish question did not appear on the agenda of the sixth session of the General Assembly. During that session, however, while the Third Committee was engaged in a discussion of the draft International Covenant on Human Rights, the representative of Poland submitted the following draft resolution: 29/

"The Third Committee of the General Assembly,

"Concerned over violations of human rights, in Spain,

"Noting that twenty-four inhabitants of Barcelona, among them Gregorio López Raimundo, have been arraigned before a military court for participation in the Barcelona strike and that they are under threat of death penalty,

"Requests the President of the General Assembly to take the necessary steps in order that the appropriate authorities in Spain take measures to ensure the cessation of the persecution of the above-mentioned twenty-four inhabitants of Barcelona and their immediate release."

38. Some representatives held 30/ that the draft resolution submitted by Poland was not relevant to the item on the Committee's agenda. Others contended that the Committee was debarred by Article 2 (7) from adopting that draft resolution. The arguments on the latter contention, which are set out in the Analytical Summary of Practice, related to the following question:

Whether a request for a stay of execution constitutes intervention (paragraph 365).

39. At its 392nd meeting, the Third Committee, by 28 votes to 13 with 13 abstentions, 31/ directed its Rapporteur to include "in the report To the Assembly" a statement that the Committee, without considering the substance of the draft resolution submitted by the delegation of Poland ..., decides that the subject matter of the draft resolution is not within the item under discussion, and that the Committee is not authorized, under rule 97 of the rules of procedure, to introduce this draft resolution as a new item on its own initiative". 32/

40. Consequently the draft resolution submitted by Poland was not put to the vote.

29/ G A (VI), Annexes, a.i. 29, pp. 52 and 53, A/C.3/L.203/Rev.1, para. 98.

30/ G A (VI), 3rd Com., 391st mtg., paras. 6, 22 and 24; 392nd mtg., para. 68.

31/ G A (VI), 3rd Com., 392nd mtg., para. 97.

32/ G A (VI), Annexes, a.i. 29, p. 36, A/C.3/L.220; p. 54, A/2112, para. 109.

Case No. 2

*Treatment of people of Indian origin in
the Union of South Africa*

41. The item entitled "Treatment of people of Indian origin in the Union of South Africa" ^{33/} was discussed by the General Assembly at its first, second, third, fifth, sixth, seventh and eighth sessions. The item was brought to the attention of the Assembly for the first time by the representative of India in a letter ^{34/} dated 22 June 1946. That representative, and later the representative of Pakistan ^{35/}, contended that the Union Government's treatment of people of Indian origin living in South Africa was contrary to the Charter provisions on human rights and to the Cape Town Agreements ^{36/} concluded in 1927 and 1932 between the Union and India. Those representatives held, furthermore, that, by that treatment, the Union had created a situation which impaired friendly relations among nations within the meaning of Article 14.

42. At each of the sessions at which the item was discussed, the representative of the Union of South Africa opposed, on the grounds of Article 2 (7), all the substantive draft resolutions that were submitted. He contended that, since the people of Indian origin were Union nationals, the matter fell essentially within the Union's domestic jurisdiction and therefore could not be dealt with by the General Assembly. That contention was supported by some representatives and disputed by others. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the term "to intervene" (paragraphs 342 and 343);

Whether a recommendation constitutes intervention (paragraph 359);

The meaning of the expression "matters which are essentially within the domestic jurisdiction of any state" (paragraph 386);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399 and 400);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraphs 409 and 410);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 413-415);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434);

Whether the International Court of Justice should be requested to give an advisory opinion on the question of domestic jurisdiction (paragraphs 466 and 469).

43. At the first, second, third and fifth sessions, the Assembly included ^{37/} the item in its agenda without a vote, since there had been no formal objection to inclusion.

^{33/} At the first, second and third sessions of the General Assembly the item was entitled "Treatment of Indians in the Union of South Africa".

^{34/} G A (I/2), Joint 1st and 6th Com., pp. 52 and 53, annex 1 (A/149).

^{35/} See footnote 59.

^{36/} For the text of the Cape Town Agreements, see G A (I/2), Joint 1st and 6th Com., annex 1 a (A/68), pp. 66 and 67, and annex 1 b (A/167), pp. 92 and 93.

^{37/} At the first session the Assembly referred the item to a joint committee of the First and Sixth Committees. At the second and third sessions it referred the item to the First Committee. At the fifth session it referred the item to the Ad Hoc Political Committee.

44. At the sixth, seventh and eighth sessions, however, the representative of South Africa, invoking Article 2 (7), formally objected to the inclusion of the item in the agenda. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347, 349, 351 and 352).

At each of those three sessions the Assembly decided by formal vote 38/ to include 39/ the item in its agenda despite the objections raised by the representative of South Africa.

45. The General Assembly took the following decisions during its consideration of the item.

a. DECISION ON A PROPOSAL TO REQUEST AND ADVISORY OPINION OF
THE INTERNATIONAL COURT OF JUSTICE

46. The representative of the Union of South Africa submitted to the General Assembly at its first session an amendment 40/ to a draft resolution recommended by the Joint Committee of the First and Sixth Committees for adoption (see footnote 37). The amendment substituted for the draft resolution a text requesting the International Court of Justice "to give an advisory opinion on the question whether the matters referred to in the Indian application 41/ are, under Article 2, paragraph 7 of the Charter, essentially within the domestic jurisdiction of the Union". At its 52nd plenary meeting the Assembly rejected 42/ the amendment submitted by South Africa

38/ The Assembly included the item in the agenda of its sixth session by 40 votes to 1, with 12 abstentions; in the agenda of its seventh session by 46 votes to 1, with 6 abstentions; and in the agenda of its eighth session by 45 votes to 1, with 11 abstentions. (G A (VI), Plen., 341st mtg., para. 41; G A (VII), Plen., 380th mtg., para. 140; G A (VIII), Plen., 435th mtg., para. 17).

39/ At its sixth, seventh and eighth sessions, the Assembly referred the item to the Ad Hoc Political Committee.

40/ G A (I/2), Plen., 50th mtg., A/205/Add.1, pp. 1009 and 1010.

41/ See paragraph 41 and footnote 34.

42/ G A (I/2), Plen., 52nd mtg., p. 1061.

by 31 votes to 21, with 2 abstentions. ^{43/} At the same meeting it adopted resolution 44 (I) as recommended by the Joint Committee for adoption. Resolution 44 (I) is studied in paragraphs 54-55.

b. DECISIONS CONCERNING COMPETENCE

1. Decisions taken at the third session

^{44/} During the third session of the General Assembly, at the beginning of the discussion on the item in the First Committee, ^{44/} the representative of South Africa asked the Chairman to rule that under rule 110 ^{45/} of the rules of procedure "the matter of competence must be discussed and decided upon by the First Committee before the substance of the question was discussed". ^{46/} At its 263rd meeting, the Committee rejected ^{47/} the motion submitted by the representative of South Africa by 33 votes to 7, with 10 abstentions, and proceeded to discuss the substance of the item.

^{48/} At the Committee's 265th meeting, during the general debate, the representative of South Africa submitted a draft resolution to the effect that the matter "was essentially within the domestic jurisdiction of the Union of South Africa, and that it did not fall within the competence of the Assembly". ^{48/} He also stated that since his presence at the table of the Committee would constitute technical participation in the debate, he would take a seat behind the table and follow the discussion as an observer. He proposed later to resume his seat in order to answer any arguments which might be

^{43/} Mention of the International Court of Justice was also made in a joint draft resolution submitted at the second session of the General Assembly by Belgium, Brazil, Cuba, Denmark and Norway. The joint draft resolution called upon the Union and Indian Governments "after inviting the Government of Pakistan to take part in their negotiations, to continue their efforts with a view to reaching an agreement settling their dispute through a round table conference or other direct means or, if necessary, by mediation or conciliation, and, should they fail to reach such an agreement, to submit the question of the extent of their obligations under the agreements concluded between them and under the relevant provisions of the Charter to the International Court of Justice." (G A (II), Plen., vol. II, pp. 1616 and 1617, annex 26 a (A/496). The agreements referred to in the joint draft resolution had been concluded at Cape Town in 1927 and 1932 between the Union and India. The representative of South Africa contended that the agreements did not remove the question under consideration from the Union's domestic jurisdiction since they were mere declarations of policy and imposed no obligations on the parties (G A (II), 1st Com., 106th mtg., pp. 420 and 421, 110th mtg., p. 458). The representative of India held, on the contrary, that the agreements imposed obligations on the parties in respect of the people of Indian origin and, therefore, removed the question from the Union's domestic jurisdiction. (G A (I/2), Joint 1st and 6th Com., 2nd mtg., p. 10). At its 120th plenary meeting, the Assembly rejected the joint draft resolution by 29 votes to 24, with 3 abstentions. (G A (II), Plen., vol. II, 120th mtg., p. 1170).

^{44/} See footnote 37.

^{45/} Rule 110, amended by the deletion of the word "immediately" between the words "vote" and "before", became rule 122 in the 1954 edition of the rules of procedure of the General Assembly.

^{46/} G A (III/2), 1st Com., 263rd mtg., pp. 246 and 247.

^{47/} G A (III/2), 1st Com., 263rd mtg., p. 253.

^{48/} G A (III/2), 1st Com., 265th mtg., p. 280, A/C.1/460.

raised concerning the motion of competence which he had submitted, and to take part in the vote on that motion. 49/

49. At the end of the general debate and before the vote on the substantive draft resolutions, the First Committee, at its 268th meeting, rejected 50/ the draft resolution submitted by the representative of South Africa by 33 votes to 5, with 12 abstentions.

ii. Decision taken at the fifth session

50. During the fifth session of the General Assembly, at the beginning of the discussion on the item in the Ad Hoc Political Committee, 51/ at its 41st meeting, the representative of South Africa invoked Article 2 (7) and raised the question of the competence of the Committee and the United Nations to deal with the item on the agenda. 52/ The Chairman ruled that the discussion would proceed on both the question of competence and the substance of the item, and that a vote would be taken on the question of competence prior to voting on any proposals submitted. 53/ The Chairman's ruling was not challenged.

51. At the 46th meeting of the Committee, when the general debate was drawing to a close, the representative of Syria submitted the following draft resolution:

"The Ad Hoc Political Committee,

"In view of the fact that the question of competence regarding the item on the agenda relative to the treatment of people of Indian origin in the Union of South Africa has been considered,

"In view of the discussion on this subject and the proposals submitted,

"Decides that it is competent to consider and vote on such proposals as have been submitted." 54/

52. At the same meeting, the Committee adopted 55/ the draft resolution submitted by Syria by 35 votes to 3, with 17 abstentions. The proposals referred to therein were subsequently adopted by the Assembly as resolution 395 (V) (see paragraphs 60-63).

49/ G A (III/2), 1st Com., 265th mtg., p. 280.

50/ G A (III/2), 1st Com., 268th mtg., p. 321.

51/ See footnote 37.

52/ G A (V), Ad Hoc Pol. Com., 41st mtg., paras. 1-6.

53/ G A (V), Annexes, a.1. 57, p. 3, A/1548, para. 5; see also Ad Hoc Pol. Com., 42nd mtg., para. 75.

54/ G A (V), Ad Hoc Pol. Com., 46th mtg., para. 110, A/AC.38/L.40.

55/ G A (V), Ad Hoc Pol. Com., 46th mtg., para. 112.

C. RESOLUTIONS 44 (II), 265 (III), 395 (V), 511 (VI),
615 (VIII) AND 719 (VIII)

53. During its first eight sessions the Assembly adopted six resolutions on the question of the treatment of the people of Indian origin in the Union of South Africa. 56/ None made any reference to the objections which the representative of South Africa had raised at each session on the grounds of Article 2 (7) (see paragraph 42).

1. Resolution 44 (I)

54. Resolution 44 (I) was adopted 57/ at the 52nd plenary meeting on 8 December 1946, by 32 votes to 15, with 7 abstentions.

55. The preamble to the resolution read:

"The General Assembly,

"Having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter:"

56. Paragraph 1 of the operative part referred to Article 14 of the Charter in the following terms:

"1. States that, because of that treatment, friendly relations between the two Member States have been impaired and, unless a satisfactory settlement is reached, these relations are likely to be further impaired;"

Paragraph 2 of the operative part referred to the treaty obligations contained in the Cape Town Agreements (see paragraph 41) and to the "relevant provisions of the Charter", without specifying which provisions were relevant. The paragraph read:

"2. Is of the opinion that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter;"

Paragraph 3 -- the last paragraph of the resolution -- read:

"3. Therefore requests the two Governments to report at the next session of the General Assembly the measures adopted to this effect.".

56/ No resolution on this question was adopted at the second and fourth sessions.

At the second session the First Committee submitted to the Assembly a draft resolution requesting "the two Governments of India and of the Union of South Africa" to enter into discussions at a round table conference on the basis of "resolution 44 (I) and to report the result of such discussions to the Secretary-General (G A (II), Plen., vol. II, 119th mtg., pp. 1111 and 1112, A/492). At the plenary meeting the draft resolution failed to obtain the requisite two-thirds majority and was therefore rejected (G A (II), Plen., vol. II, 120th mtg., pp. 1169 and 1170).

57/ At the fourth session, the question did not appear on the Assembly's agenda. G A (I/2), Plen., 52nd mtg., p. 1061.

ii. Resolution 265 (III)

57. Resolution 265 (III) was adopted 58/ at the 212th plenary meeting on 14 May 1949, by 47 votes to 1, with 10 abstentions.

58. The preamble took note of the application made by the Government of India and of the considerations put forward by the Government of the Union.

59. The operative part read:

"The General Assembly,

".

"Invites the Governments of India, Pakistan /59/ and the Union of South Africa to enter into discussion at a round-table conference, taking into consideration the purposes and principles of the Charter of the United Nations and the Declaration of Human Rights."

No reference was made to the Cape Town Agreements.

iii. Resolution 395 (V)

60. Resolution 395 (V) was adopted 60/ at the 315th plenary meeting on 2 December 1950, by 33 votes to 6, with 21 abstentions.

61. The preamble recalled resolutions 44 (I) and 265 (III). It also recalled resolutions 103 (I), concerning racial persecution, and 217 (III), relating to the Universal Declaration of Human Rights. Finally, it stated that "a policy of racial segregation (Apartheid) is necessarily based on doctrines of racial discrimination".

62. The operative part read:

"The General Assembly

".

"1. Recommends that the Governments of India, Pakistan and the Union of South Africa proceed, in accordance with resolution 265 (III), with the holding of a round table conference on the basis of their agreed agenda /61/ and bearing in mind the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights;

58/ G A (III/2), Plen., 212th mtg., p. 455.

59/ A section of the Indian minority in the Union of South Africa originated from the parts of India which are now the State of Pakistan.

60/ G A (V), Plen., vol. I, 315th mtg., para. 51.

61/ Pursuant to resolution 265 (III), India had reported to the Assembly at its fifth session that it had reached an agreement with the Union on an agenda for a round table conference but that, following the adoption of the Group Areas Act by the Union Parliament, negotiations had been broken off. (G A (V), Annexes, a.i. 57, pp. 1 and 2, A/1289).

"2. Recommends that, in the event of failure of the governments concerned to hold a round table conference before 1 April 1951 or to reach agreement in the round table conference within a reasonable time, there shall be established for the purpose of assisting the parties in carrying through appropriate negotiations a commission of three members, one member to be nominated by the Government of the Union of South Africa, another to be nominated by the Governments of India and Pakistan and the third to be nominated by the other two members or, in default of agreement between these two in a reasonable time, by the Secretary-General;

"3. Calls upon the governments concerned to refrain from taking any steps which would prejudice the success of their negotiations, in particular, the implementation or enforcement of the provisions of 'The Group Areas Act', pending the conclusion of such negotiations;

"4. Decides to include this item in the agenda of the next regular session of the General Assembly."

63. The resolution made no specific mention of Article 14 of the Charter or of the Cape Town Agreements. However, it recalled resolution 44 (I), which referred both to Article 14 and to the Cape Town Agreements.

iv. Resolution 511 (VI)

64. Resolution 511 (VI) was adopted 62/ at the 360th plenary meeting on 20 December 1951, by 44 votes to none, with 14 abstentions.

65. The preamble recalled the previous resolutions adopted on the question, including resolution 44 (I). It also recalled resolutions 105 (I), concerning racial persecution, and 217 (III), relating to the Universal Declaration of Human Rights. It stated that "a policy of 'racial segregation' (apartheid) is necessarily based on doctrines of racial discrimination". Finally the preamble noted that "the Government of the Union of South Africa has been unable up to the present time to accept General Assembly resolution 395 (V) as a basis for a round-table conference", 63/ and that "the promulgation on 30 March 1951 of five proclamations under the Group Areas Act renders operative thereby the provisions of that Act in direct contravention of paragraph 3 of resolution 395 (V)".

66. The operative part of resolution 511 (VI) recommended establishment of the commission of three members referred to in paragraph 2 of resolution 395 (V), called upon the Union Government to "suspend the implementation or enforcement of the provisions of the Group Areas Act pending the conclusion of the negotiations" and decided to "include this item in the agenda" of the seventh session of the General Assembly.

67. Here, again, no specific mention was made of Article 14 of the Charter or of the Cape Town Agreements. The resolution, however, recalled resolution 44 (I), which referred to both Article 14 and the Cape Town Agreements.

62/ G A (VI), Plen., 360th mtg., para. 35.

63/ The Union of South Africa had informed the Assembly that it was unable to accept resolution 395 (V) since the terms of that resolution constituted intervention in a matter which was essentially within the Union's domestic jurisdiction (G A (VI), Annexes, a.i. 25, p. 1, A/1787).

v. Resolution 615 (VII)

68. Resolution 615 (VII) was adopted 64/ at the 401st plenary meeting on 5 December 1952, by 41 votes to 1, with 15 abstentions.

69. The preamble recalled the previous resolutions adopted on the question, including resolution 44 (I). It also noted that "the Government of the Union of South Africa has expressed its inability 65/ to accept General Assembly resolution 511 (VI) in respect of the resumption of negotiations with the Governments of India and Pakistan", and that the Union Government "has continued to enforce the Group Areas Act in contravention of ... resolutions 511 (VI) and 395 (V)".

70. The operative part established "a United Nations Good Offices Commission consisting of three members to be nominated by the President of the General Assembly, with a view to arranging and assisting in negotiations between the Government of the Union of South Africa and the Governments of India and Pakistan in order that a satisfactory solution of the question in accordance with the Purposes and Principles of the Charter and the Universal Declaration of Human Rights may be achieved".

71. Finally, resolution 615 (VII) called upon the Government of the Union to suspend the implementation of the Group Areas Act and decided to include the item in the provisional agenda of the eighth session of the General Assembly.

72. The resolution made no specific reference to Article 14 of the Charter or to the Cape Town Agreements. However, it recalled resolution 44 (I), which referred to both Article 14 and the Agreements.

vi. Resolution 719 (VIII)

73. Resolution 719 (VIII) was adopted 66/ at the 457th plenary meeting on 11 November 1953, by 42 votes to 1, with 17 abstentions.

74. The preamble stated that "resolution 44 (I) of 8 December 1946 expressed the opinion that the treatment of Indians in the Union of South Africa should be in conformity with the international obligations under the agreements concluded between the Governments of India and the Union of South Africa and the relevant provisions of the Charter and requested the two Governments to report to the General Assembly on the measures adopted to this effect". No mention was made of the paragraph of resolution 44 (I) which referred to Article 14 of the Charter. The preamble also recalled that "resolution 265 (III) ... invited the Governments of India, Pakistan and the Union of South Africa to enter into discussion at a round table conference, taking into consideration the Purposes and Principles of the Charter and the Declaration of Human Rights". Finally the preamble quoted from the other resolutions adopted on the question of the treatment of the people of Indian origin in the Union of South Africa.

64/ G A (VII), Plen., 401st mtg., para. 69.

65/ The Secretary-General reported to the Assembly at its seventh session that the Union Government had "indicated that it was not able to accept the terms of Resolution 511 (VI)" as it constituted interference in a matter which was essentially within the domestic jurisdiction of the Union of South Africa" (G A (VII), Annexes, a.i. 22, p. 2, A/2218, para. 3).

66/ G A (VIII), Plen., 457th mtg., para. 93.

75. The operative part of resolution 719 (VIII) read:

"The General Assembly

".

"5. Expresses its regret that the Government of the Union of South Africa:

"(a) Has refused [57] to make use of the Commission's good offices or to utilize any of the alternative procedures for the settlement of the problem recommended by the four previous resolutions of the General Assembly;

"(b) Has continued to implement the provisions of the Group Areas Act in spite of the provisions of three previous resolutions;

"(c) Is proceeding with further legislation contrary to the Charter and the Universal Declaration of Human Rights, including the Immigrants Regulation Amendment Bill which seeks to prohibit the entry into South Africa of wives and children of South African nationals of Indian origin;

"6. Considers that these actions of the Government of the Union of South Africa are not in keeping with its obligations and responsibilities under the Charter of the United Nations;

"7. Decides to continue the United Nations Good Offices Commission and urges the Government of the Union of South Africa to co-operate with that Commission;

"8. Requests the Commission to report to the General Assembly at its next regular session the extent of progress achieved, together with its own views on the problem and any proposals which, in its opinion, may lead to a peaceful settlement of it;

"9. Again calls upon the Government of the Union of South Africa to refrain from implementing the provisions of the Group Areas Act;

"10. Decides to include this item in the provisional agenda of the ninth session of the General Assembly."

Case No. 3

The question of convening conferences of representatives of Non-Self-Governing Territories

76. By a letter 68/ dated 1 November 1946, the representative of the Philippines requested the General Assembly to include in the agenda of the second part of its first session a "proposal to hold a conference to implement the provisions of Chapter XI of the Charter". At its 47th plenary meeting the Assembly included 69/ the proposal in the agenda. No objections were raised on the grounds of Article 2 (7).

67/ See Report of the United Nations Good Offices Commission (G A (VIII), Annexes, a.i. 20, pp. 1 and 2, A/2473).

68/ G A (I/2), 6th Com., pp. 284-286, annex 18 (A/BUR/54).

69/ The proposal was included in the agenda without a vote (G A (I/2), Plen., 47th mtg., p. 953).

77. At its 64th plenary meeting the Assembly considered a draft resolution submitted by the Fourth Committee, 70/ to which the proposal had been referred. 71/ The operative part of the draft resolution 72/ read in part:

"The General Assembly

".

"Recommends that the Economic and Social Council, together with the Administrative Authorities concerned, organize the convocation of regional conferences of representatives of Non-Self-Governing Territories..."

78. Several representatives criticized the draft resolution on the grounds of Article 2 (7). The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraphs 423 and 424).

79. At its 64th plenary meeting on 14 December 1946, the Assembly, by 23 votes to 14, with 17 abstentions, adopted 73/ an amendment 74/ submitted by Cuba, which substituted the following text for the phrase quoted in paragraph 77:

"Recommends that the Economic and Social Council, together with the administration of Non-Self-Governing Territories to convene conferences of representatives of Non-Self-Governing Peoples..."

80. At the same meeting the draft resolution with the amendment submitted by Cuba was adopted 75/ by 31 votes to 1, with 21 abstentions, and became resolution 67 (I), which read as follows:

"The General Assembly,

"Considering that the resolution 76/ on Non-Self-Governing Peoples adopted during the first part of the first session of the General Assembly draws attention to the fact that the obligations accepted by Members of the United Nations under Chapter XI of the Charter are already in full force,

"Recognizing the importance of the declaration contained in Chapter XI of the Charter especially as it concerns the peace and security of the world, and the political, economic, social and educational advancement of the peoples of Non-Self-Governing Territories as well as their just treatment and protection against abuses,

70/ The Committee adopted the draft resolution by 18 votes to 15, with 2 abstentions (G A (I/2), 4th Com., 21st mtg., p. 131).

71/ In including the proposal in the agenda, the Assembly had referred it simultaneously to the Fourth and Sixth Committees. The final report to the Assembly, however, was submitted by the Fourth Committee alone.

72/ G A (I/2), Plen., pp. 1561-1563, annex 7f (A/251).

73/ G A (I/2), Plen., 64th mtg., p. 1356.

74/ Ibid.

75/ G A (I/2), Plen., 64th mtg., p. 1357.

76/ G A resolution 9 (I).

"Recommends all Members having or assuming responsibilities for the administration of Non-Self-Governing Territories to convene conferences of representatives of Non-Self-Governing Peoples chosen or preferably elected in such a way that the representation of the people will be ensured to the extent that the particular conditions of the territory concerned permit, in order that effect may be given to the letter and spirit of Chapter XI of the Charter and that the wishes and aspirations of the Non-Self-Governing Peoples may be expressed."

Case No. 4

*The question of the establishment of committees on
information transmitted under Article 73 e*

81. At its first session the General Assembly, by resolution 66 (I), established an ad hoc committee to study the information transmitted under Article 73 e by Member States responsible for the administration of Non-Self-Governing Territories. At its second session the Assembly, by resolution 146 (II), invited the Fourth Committee to constitute:

"a special committee to examine the information transmitted under Article 73 e of the Charter on the economic, social and educational conditions in the Non-Self-Governing Territories, and to submit reports thereon for the consideration of the General Assembly with such procedural recommendations as it may deem fit, and with such substantive recommendations as it may deem desirable relating to functional fields generally but not with respect to individual territories".

At its third session the Assembly, by resolution 219 (III), constituted "a special committee similar to that established at the second session".

82. At its fourth session the Assembly, by resolution 332 (IV), decided "to constitute a Special Committee for a three-year period" and invited:

"the Special Committee to examine, in the spirit of paragraphs 3 and 4 of Article 1 and of Article 55 of the Charter, the summaries and analyses of information transmitted under Article 73 e of the Charter on the economic, social and educational conditions in the Non-Self-Governing Territories, including any papers prepared by the specialized agencies and any reports or information on measures taken in pursuance of the resolutions adopted by the General Assembly concerning economic, social and educational conditions in the Non-Self-Governing Territories;"

Furthermore, resolution 332 (IV) requested the Special Committee:

"to submit to the regular sessions of the General Assembly in 1950, 1951 and 1952 reports containing such procedural recommendations as it may deem fit and such substantive recommendations as it may deem desirable relating to functional fields generally but not with respect to individual Territories;"

83. At its sixth session the Assembly, by resolution 569 (VI), decided that the Special Committee "shall henceforth be known by the following title: 'Committee on Information from Non-Self-Governing Territories'". At its seventh session it decided, by resolution 646 (VII), "to continue the Committee on Information from Non-Self-Governing Territories on the same basis for a further three-year period".

84. The problem of domestic jurisdiction was discussed during the debates which led to the adoption of the above-mentioned resolutions. The arguments, which

are set out in the Analytical Summary of Practice, related to the following question:

Whether a matter governed by the Charter in general and by the provisions regarding Non-Self-Governing Territories in particular can fall essentially within domestic jurisdiction (paragraphs 409, 410, 423 and 424).

85. A detailed account of the proceedings relating to resolutions 66 (I), 146 (II), 219 (III), 332 (IV), 569 (VI) and 646 (VII), and an analysis of their provisions may be found in II, B, 3 of the study on Article 73 in this Repertory.

Case No. 5

The question of the competence of the General Assembly to determine the territories to which Article 73 e applies

86. The problem of domestic jurisdiction was raised during the debates relating to the question of the General Assembly's competence to determine the territories to which Article 73 e of the Charter applies. That question was discussed at the third, fourth, fifth, sixth, seventh and eighth sessions of the Assembly in connexion with the consideration of the items concerning information from Non-Self-Governing Territories, factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government, and cessation of the transmission of information under Article 73 e of the Charter.

87. The arguments, which are set out in the Analytical Summary, related to the following question:

Whether a matter governed by the Charter in general and by the provisions regarding Non-Self-Governing Territories in particular can fall essentially within domestic jurisdiction (paragraphs 409, 423 and 424).

The relevant decisions and proceedings are described in II, C, 1 of the study on Article 73 in this Repertory.

Case No. 6

Threats to the political independence and territorial integrity of Greece

88. The item entitled "Threats to the political independence and territorial integrity of Greece" was discussed by the General Assembly from its second to its sixth sessions, inclusive. During those discussions the problem of domestic jurisdiction arose mainly in connexion with draft resolutions dealing with death sentences pronounced by Greek tribunals. These draft resolutions were submitted to the Assembly at its third, fourth, fifth and sixth sessions. Some were judged 77/ by

77/ During the fourth session of the General Assembly, the First Committee decided (G A (IV), 1st Com., 297th mtg., paras. 41 et seqq.) "that it was not competent to adopt" four draft resolutions dealing with the question of death sentences and submitted, respectively, by the USSR (G A (IV), 1st Com., Annex, p. 16, A/C.1/507), Colombia (*ibid.*, pp. 16 and 17, A/C.1/510), Uruguay (*ibid.*, p. 17, A/C.1/511/Rev.1) and Paraguay (A/C.1/509). It would appear from the record of the discussion that, while certain representatives expressed the view that these draft resolutions violated Article 2 (7) (G A (IV), 1st Com., 295th mtg., para. 22; 296th mtg., paras. 14 and 30), the majority was of the opinion that the Committee was not competent to consider them for reasons not based on Article 2 (7) (G A (IV), 1st Com., 294th mtg., paras. 35 and 36; 295th mtg., paras. 12, 18 and 48; 296th mtg., paras. 10 and 14; 297th mtg., paras. 11 and 19).

the Committee to which they were referred to be beyond its competence for reasons not based on Article 2 (7). Others were discussed with reference to that Article and are therefore studied below. They may be divided into three groups.

89. The first group is composed of three draft resolutions containing recommendations addressed to the Greek Government, requesting that Government to suspend or rescind death sentences pronounced by Greek tribunals. The draft resolutions were submitted, at the third, fourth and sixth sessions, respectively, by the representatives of Yugoslavia, 78/ Poland 79/ and the USSR. 80/ During the discussions several representatives held 81/ that the draft resolutions constituted intervention in Greece's domestic jurisdiction and that the United Nations was therefore not competent to consider them. Others maintained, 82/ however, that humanitarian feelings should prevail over legal considerations. None of the draft resolutions was adopted. The draft resolution submitted by Yugoslavia was judged 83/ by the Committee to which it was submitted to be beyond its competence and was never put to the vote; the two others were rejected. 84/

90. The second group is composed of two draft resolutions submitted, respectively, by France and Ecuador. Neither draft resolution contained a recommendation addressed to the Greek Government. Both were couched in general terms, and did not refer to any specific death sentences.

91. The draft resolution submitted by France was based on a suggestion 85/ made by the delegation of Greece and was supported 86/ by that delegation. It was submitted to the First Committee at the third session of the General Assembly. It read:

"The First Committee,

"Having noted the offer made by the Greek delegation to get in touch with the Chairman of the Committee for the purpose of examining the matter of death sentences/ ... , and trusting that the Chairman will take all the necessary steps to that end,

"Proceeds to the next item on the agenda." 87/

92. At its 186th meeting, the First Committee adopted 88/ that draft resolution by 41 votes to none, with 9 abstentions.

78/ G A (III/1), 1st Com., Annexes, p. 48, A/C.1/371.

79/ G A (IV), 1st Com., Annexes, p. 12, A/C.1/483.

80/ A/1989, same text as G A (VI), Annexes, s.i. 19, p. 13, A/AC.53/L.6.

81/ G A (III/1), 1st Com., 186th mtg., pp. 442, 445 and 446; G A (IV), 1st Com., 275th mtg., paras. 39 and 46; 276th mtg., para. 49.

82/ G A (III/1), 1st Com., 186th mtg., p. 444; G A (IV), 1st Com., 275th mtg., para. 19.

83/ G A (III/1), 1st Com., 186th mtg., p. 449.

84/ G A (IV), 1st Com., 276th mtg., para. 76; G A (VI), Plen., 351st mtg., para. 128.

85/ G A (III/1), 1st Com., 186th mtg., p. 442.

86/ G A (III/1), 1st Com., 186th mtg., p. 443.

87/ G A (III/1), 1st Com., Annexes, p. 48, A/C.1/372.

88/ G A (III/1), 1st Com., 186th mtg., p. 449.

93. The draft resolution 89/ submitted by Ecuador was considered by the First Committee at the fourth session of the General Assembly. It read:

"The First Committee

"Requests the President of the General Assembly to negotiate with the representatives of the Government of Greece concerning the suspension of death sentences passed by military courts for political reasons, as long as the Conciliation Committee 90/ is in existence."

94. At its 297th meeting, the First Committee decided, 91/ by 31 votes to 16, with 12 abstentions, that it was competent to take a vote on the Ecuadorian draft resolution. The representative of Greece voted against the Committee's competence. It does not appear that he stated the reasons for his vote.

95. At its 298th meeting, the Committee, by 40 votes to 4, with 10 abstentions, adopted 92/ the following revised version 93/ of the draft submitted by Ecuador:

"The First Committee

"Requests the President of the General Assembly to ascertain the views of the Government of Greece concerning the suspension of death sentences passed by military courts for political reasons as long as the Conciliation Committee is in existence."

96. At its 268th plenary meeting on 5 December 1949, the General Assembly in turn approved 94/ the revised version of the draft resolution submitted by Ecuador.

97. The third group is composed of two proposals submitted by the USSR: one, an amendment to the draft resolution submitted by France, studied above (see para. 91), and the other a separate draft resolution. Like the resolutions in the second group, these proposals did not contain recommendations addressed to the Greek Government. They did, however, refer to specific death sentences.

89/ G A (IV), 1st Com., Annex, p. 17, A/C.1/512 and A/C.1/512/Rev.1 (incorporating the amendments proposed by Venezuela (G A (IV), 1st Com., 297th mtg., para. 20) and USSR (*ibid.*, para. 48), which were accepted by Ecuador (*ibid.*, paras. 49 and 55)).

90/ The Conciliation Committee was created by the First Committee at its 2/6th meeting "in an endeavour to reach a pacific settlement of existing differences between Greece on the one hand, and Albania, Bulgaria and Yugoslavia on the other". (G A (IV), 1st Com., Annex, p. 12, A/C.1/506.)

91/ G A (IV), 1st Com., 297th mtg., para. 61.

92/ At the same meeting, the Committee rejected the following USSR amendments to the draft resolution submitted by Ecuador:

(1) "insert the words 'and cancellation' after the word 'suspension'

(G A (IV), 1st Com., 298th mtg., para. 4).

(2) "delete the words 'as long as the Conciliation Committee is in existence' (*ibid.*)

(3) "substitute for the words 'to ascertain the views of the Government of Greece' the words 'to negotiate with the representatives of the Government of Greece'" (*ibid.*, para. 6).

93/ G A (IV), 1st Com., 298th mtg., para. 12.

94/ G A (IV), Plen., 268th mtg., para. 131. The record of the meeting does not indicate the results of the vote.

98. The amendment 95/ proposed by the USSR provided that the phrase "take all the necessary steps to that end" appearing in the draft resolution submitted by France be replaced by "take measures to save the lives of the trade unionists who have been condemned to death". At its 186th meeting, the First Committee decided 96/ by 37 votes to 6, with 6 abstentions, that it "was not competent to entertain" that amendment.

99. The draft resolution submitted by the USSR 97/ was considered by the First Committee at the fifth session of the General Assembly. It read:

"Taking notice of the fact that the military courts in Greece are at the present time continuing to pass death sentences on members of the Greek trade union and the people's liberation movement, the First Committee requests the President of the General Assembly to enter into negotiations with the representatives of the Greek Government concerning the repeal of the death sentences passed by the military courts on Greek patriots, including the eleven Greek patriots named in their mothers' letter of 18 September last, and on the eight trade union officials named in the memorandum of their relatives of 16 September last."

100. After a debate during which several representatives stated 98/ that in their opinion the draft resolution submitted by the USSR constituted intervention in Greece's domestic jurisdiction, the First Committee at its 393rd meeting rejected 99/ that draft resolution by 31 votes to 6, with 12 abstentions.

Case No. 7

Observance of Human Rights in the Union of Soviet Socialist Republics

101. By a letter 100/ dated 27 May 1948, the Permanent Representative of Chile, invoking Article 14 of the Charter, requested the General Assembly to include the following item in the agenda of its third session: "Violation by the USSR of fundamental human rights, traditional diplomatic practices and other principles of the Charter" 101/. The representative of Chile alleged that the USSR had taken legislative and administrative measures to prevent Soviet "wives of foreign nationals from leaving the USSR either in company with their husbands or in order to rejoin them". He contended that those measures violated the Charter provisions on human rights, and "could impair the friendly relations among nations" (Article 14), and, when they affected the wives of members of foreign diplomatic missions, also violated diplomatic practices.

95/ G A (III/1), 1st Com., Annexes, p. 48, A/C.1/373.

96/ G A (III/1), 1st Com., 186th mtg., p. 449.

97/ G A (V), 1st Com., vol. I, 346th mtg., para. 11, A/C.1/559.

98/ G A (V), 1st Com., vol. I, 393rd mtg., paras. 26, 29 and 31.

99/ G A (V), 1st Com., vol. I, 393rd mtg., para. 61.

100/ G A (III/1), Plen., Annexes, p. 1, A/560.

101/ The title quoted above is the final wording of the item as proposed by the representative of Chile. It appears in the provisional agenda for the third session (G A (III/1), Plen., Annexes, pp. 32-35, A/585, item 44).

102. During the discussion on the adoption of the agenda, the USSR representative claimed 102/ that the women referred to in the Chilean complaint had retained Soviet citizenship. They therefore came under the nationality laws of the USSR and its regulations on exit visas for its own nationals, and those were matters essentially within its domestic jurisdiction. Invoking Article 2 (7), the representative of the USSR moved that the item be deleted from the provisional agenda. At its 142nd plenary meeting on 24 September 1948, the Assembly rejected 103/ the USSR motion by 30 votes to 7, with 17 abstentions and included the item in its agenda. 104/

103. During the consideration of the item, the representative of the USSR restated the objections he had raised on the grounds of Article 2 (7). The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international law can fall essentially within domestic jurisdiction (paragraph 392);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 409);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 413 and 415);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

104. Despite the objections raised on the grounds of Article 2 (7), the General Assembly, at its 197th meeting on 25 April 1949 adopted 105/ resolution 285 (III) by 39 votes to 6, with 11 abstentions.

105. The preamble to the resolution quoted the human rights provisions contained in the Preamble to the Charter, and in Articles 1 (3) and 55 c. It referred to articles 13 and 16 of the Universal Declaration of Human Rights and recalled that "the Economic and Social Council ... in its resolution 154 (VII) D ... deplored the 'legislative or administrative provisions which deny to a woman the right to leave her country of origin and reside with her husband in any other'".

102/ G A (III/1), General Com., 43rd mtg., pp. 10 and 11; Plen., 142nd mtg., pp. 97 and 98; G A (III/2), Plen., 196th mtg., p. 153.

103/ G A (III/1), Plen., 142nd mtg., p. 108.

104/ The Assembly referred the item to the Sixth Committee. In the Committee the representative of Australia submitted the following draft resolution:

"The General Assembly,

"Resolves to submit the following questions to the International Court of Justice for advisory opinion:

"1. To what degree do the privileges and immunities granted to the head of a foreign mission in accordance with diplomatic practices traditionally established by international law extend to his family and to his establishment?

"2. In particular, is the action of a State in preventing one of its nationals, who is the wife of a member of a foreign diplomatic mission or of a member of his family or of his establishment, from leaving its territory with her husband, or in order to join her husband, a breach of international law?" (G A (III/1), 6th Com., Annexes, pp. 56 and 57, A/C.6/316).

At its 139th meeting the Sixth Committee rejected the draft resolution submitted by Australia by 13 votes to 9, with 12 abstentions (G A (III/1), 6th Com., 139th mtg., p. 781)

105/ G A (III/2), Plen., 197th mtg., p. 163.

106. The operative part read:

"The General Assembly,

".

"Declares that the measures which prevent or coerce the wives of citizens of other nationalities from leaving their country of origin with their husbands or in order to join them abroad, are not in conformity with the Charter; and that when those measures refer to the wives of persons belonging to foreign diplomatic missions, or of members of their families or retinue, they are contrary to courtesy, to diplomatic practices and to the principle of reciprocity, and are likely to impair friendly relations among nations;

"Recommends the Government of the Union of Soviet Socialist Republics to withdraw the measures of such a nature which have been adopted."

107. The resolution made no reference to the objections raised on the grounds of Article 2 (7).

Case No. 8

Observance of Human Rights in Bulgaria, Hungary and Romania

108. At its third session the General Assembly discussed the question of the observance of human rights in Bulgaria and Hungary. At its fourth and fifth sessions it discussed the question of the observance of human rights in those two States and in Romania as well. As a result of its discussions the Assembly adopted three resolutions numbered respectively 272 (III), 294 (IV) and 385 (V).

a. RESOLUTION 272 (III)

109. At the second part of the third session, the representatives of Australia and Bolivia requested the General Assembly to include the following item in its agenda: "Having regard to the provisions of the Charter and of the peace treaties with Bulgaria and Hungary, the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms, including questions of religious and civil liberties, with special reference to recent trials of church leaders". 106/

106/ By a letter dated 16 March 1949, the representative of Bolivia had requested the Assembly to include in the agenda of the second part of its third session the following item: "Study of the legal proceedings against Cardinal Mindszenty of Hungary in relation to Articles 1, paragraph 3, and 55, paragraph c, of the Charter" (G A (III/2), Plen., Annexes, p. 31, A/820). By a letter dated 3 March 1949, the representative of Australia had requested the inclusion in the same agenda of an item entitled "Observance of fundamental freedoms and human rights in Bulgaria and Hungary, including the question of religious and civil liberty in special relation to recent trials of church leaders" (*ibid.*, pp. 31 and 32, A/821). At the 59th meeting of the General Committee, the two representatives agreed to combine the items which they had submitted separately in the single item the title of which is quoted above. (G A (III/2), General Com., 59th mtg., p. 34)

110. The two representatives contended that certain measures taken by the Governments of Bulgaria and Hungary, and in particular the proceedings instituted against church leaders, violated the provisions on human rights contained in the Charter and in the peace treaties recently concluded with those two Governments.

111. During the discussion on the adoption of the agenda, several representatives, invoking Article 2 (7), opposed the inclusion of the item proposed by Australia and Bolivia. They held that the matter fell essentially within the domestic jurisdiction of Bulgaria and Hungary. Furthermore, they contended that, since the United Nations was not a party to the peace treaties, it was not entitled to intervene in the interpretation and implementation of those treaties. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347, 349, 351 and 352).

112. Despite the above-mentioned objections, the General Assembly, at its 190th plenary meeting on 12 April 1949, included 107/ the item in its agenda by 30 votes to 7, with 20 abstentions, and referred it to the Ad Hoc Political Committee.

113. At its 34th meeting, the Committee, by 17 votes to 1, with 31 abstentions, invited 108/ representatives of Bulgaria and Hungary "to participate, without vote, in the discussion of this question". The two States declined 109/ the invitation, contending that the matter fell essentially within their domestic jurisdiction and that the United Nations was not competent to deal with it. That contention was supported by some Member States and disputed by others. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the expression "matters which are essentially within the domestic jurisdiction of any state" (paragraph 386);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399 and 400);

Whether a matter governed by the Charter in general and by the provisions on human rights in particular can fall essentially within domestic jurisdiction (paragraphs 409 and 413).

114. In spite of the objections raised on the grounds of Article 2 (7), the General Assembly, at its 203rd plenary meeting on 30 April 1949, by 34 votes to 6, with 9 abstentions adopted 110/ resolution 272 (III), which had been submitted to it by the Ad Hoc Political Committee.

115. The preamble to the resolution referred to the provisions on human rights contained in Article 1 (3) of the Charter and in the peace treaties with Bulgaria and Hungary.

107/ G A (III/2), Plen., 190th mtg., p. 29.

108/ G A (III/2), Ad Hoc Pol. Com., 34th mtg., p. 65.

109/ G A (III/2), Ad Hoc Pol. Com., Annexes, pp. 9-11, A/AC.24/57 and A/AC.24/58.

110/ G A (III/2), Plen., 203rd mtg., pp. 272 and 273.

116. The operative part read:

"The General Assembly,

".

"1. Expresses its deep concern at the grave accusations made against the Governments of Bulgaria and Hungary regarding the suppression of human rights and fundamental freedoms in those countries;

"2. Notes with satisfaction that steps [11] have been taken by several States signatories to the Peace Treaties with Bulgaria and Hungary regarding these accusations, and expresses the hope that measures will be diligently applied, in accordance with the Treaties, in order to ensure respect for human rights and fundamental freedoms;

"3. Most urgently draws the attention of the Governments of Bulgaria and Hungary to their obligations under the Peace Treaties, including the obligation to co-operate in the settlement of all these questions;

"4. Decides to retain the question on the agenda of the fourth regular session of the General Assembly of the United Nations."

117. The resolution made no reference to the objections raised on the grounds of Article 2 (7).

b. RESOLUTION 294 (IV)

118. Pursuant to resolution 272 (III), the item was included in the provisional agenda of the fourth session of the General Assembly. At its 65th meeting, the General Committee, on a proposal submitted by the representative of Australia, amended 112 the title of the item to read: "Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms".

119. At its 224th plenary meeting on 22 September 1949, the General Assembly included 113 the item in the agenda without a vote and referred it to the Ad Hoc Political Committee.

120. In the Committee several representatives contended that the matter fell essentially within the domestic jurisdiction of Bulgaria, Hungary and Romania and that the United Nations was not competent to deal with it. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399 and 400);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 413 and 415).

111/ Certain signatory States had sought to refer the accusations to the Commissions established by the Peace Treaties for the settlement of disputes.

112/ G A (IV), General Com., 65th mtg., para. 73.

113/ G A (IV), Plen., 224th mtg., para. 56.

121. At its 7th meeting, the Committee, by 41 votes to none, with 15 abstentions, invited 114/ Romania "to send a representative to participate, without the right to vote, in the consideration of the item under discussion". Romania declined 115/ the invitation, contending that the matter fell essentially within its domestic jurisdiction and that the United Nations was not competent to deal with it.

122. In spite of the objections raised on the grounds of Article 2 (7), the General Assembly, by 47 votes to 5, with 7 abstentions, adopted 116/ at its 235th plenary meeting on 22 October 1949, resolution 294 (IV), which had been submitted to it by the Ad Hoc Political Committee.

123. The first paragraph of the preamble to resolution 294 (IV) read:

"Whereas the United Nations, pursuant to Article 55 of the Charter, shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,"

124. The other paragraphs of the preamble recalled the terms of resolution 272 (III) and referred to the peace treaties between Bulgaria, Hungary and Romania on the one hand, and the Allied and Associated Powers on the other. They noted that certain Allied and Associated Powers had charged Bulgaria, Hungary and Romania with violations of the provisions on human rights contained in the peace treaties and had sought to refer their charges to the Commissions established by the peace treaties to settle disputes between signatory States, but that the Commissions had been unable to meet since Bulgaria, Hungary and Romania had refused to appoint their representatives.

125. The first two paragraphs of the operative part read:

"The General Assembly

"1. Expresses its continuing interest in and its increased concern at the grave accusations made against Bulgaria, Hungary and Romania;

"2. Records its opinion that the refusal of the Governments of Bulgaria, Hungary and Romania to co-operate in its efforts to examine the grave charges with regard to the observance of human rights and fundamental freedoms justifies this concern of the General Assembly about the state of affairs prevailing in Bulgaria, Hungary and Romania in this respect;"

126. The other paragraphs of the operative part requested the International Court of Justice to give an advisory opinion on the interpretation of the provisions for the settlement of disputes contained in the peace treaties and, in particular, on the question whether Bulgaria, Hungary and Romania were "obligated to carry out ... the provisions for the appointment of their representatives to the Treaty Commissions".

127. The resolution made no reference to the objections raised on the grounds of Article 2 (7).

C. RESOLUTION 385 (V)

128. Pursuant to resolution 294 (IV), the International Court of Justice delivered two advisory opinions, dated respectively 30 March and 18 July 1950.

114/ G A (IV), Ad Hoc Pol. Com., 7th mtg., para. 16.

115/ G A (IV), Ad Hoc Pol. Com., 10th mtg., para. 1, A/AC.31/L.4.

116/ G A (IV), Plen., 235th mtg., para. 52.

129. The opinion of 30 March examined the objections raised on the grounds of Article 2 (7) by Bulgaria, Hungary and Romania. The relevant part of that opinion may be found in paragraph 335. The opinion of 18 July made no reference to the problem of domestic jurisdiction.

130. As regards the substance of the questions put to it by the Assembly, the Court stated "that the Governments of Bulgaria, Hungary and Romania are obligated to carry out ... the provisions for the appointment of their representatives to the Treaty Commissions". 117/

131. The two advisory opinions were included in the provisional agenda of the fifth session of the General Assembly as part of the question of the observance of human rights in Bulgaria, Hungary and Romania.

132. During the discussion on the adoption of the agenda several representatives, invoking Article 2 (7), objected 118/ to the inclusion of the question. Despite these objections, the General Assembly, at its 284th plenary meeting on 26 September 1950, included 119/ the item in the agenda by 51 votes to 6, with 1 abstention, and referred it to the Ad Hoc Political Committee.

133. The discussion of the problem of domestic jurisdiction in the Committee is summarized below in the Analytical Summary of Practice. The arguments advanced during that discussion related to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399 and 400);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 413 and 415).

134. At its 303rd plenary meeting on 3 November 1950, the General Assembly, by 40 votes to 5 with 12 abstentions, adopted 120/ resolution 385 (V), which had been submitted to it by the Ad Hoc Political Committee.

135. As in the case of the two other resolutions adopted on the item, resolution 385 (V) made no reference to the objections raised on the grounds of Article 2 (7) by Bulgaria, Hungary and Romania and by several Member States.

136. The preamble to the resolution quoted the provision on human rights contained in Article 1 (3) of the Charter and recalled resolutions 272 (III) and 294 (IV).

137. The first paragraph of the operative part took note of the Court's advisory opinions of 30 March and 18 July 1950. The second paragraph condemned the refusal of Bulgaria, Hungary and Romania to appoint representatives to the Treaty Commissions. The other paragraphs read:

"The General Assembly,

".

117/ Interpretation of Peace Treaties, I C J Reports 1950, pp. 75-77.

118/ See para. 347 and footnote 315.

119/ G A (V), Plen., vol. I, 284th mtg., para. 166.

120/ G A (V), Plen., vol. I, 303rd mtg., para. 169.

"3. Is of the opinion that the conduct of the Governments of Bulgaria, Hungary and Romania in this matter is such as to indicate that they are aware of breaches being committed of those articles of the Treaties of Peace under which they are obligated to secure the enjoyment of human rights and fundamental freedoms in their countries; and that they are callously indifferent to the sentiments of the world community;

"4. Notes with anxiety the continuance of serious accusations on these matters against the Governments of Bulgaria, Hungary and Romania, and that the three Governments have made no satisfactory refutation of these accusations;

"5. Invites Members of the United Nations, and in particular those which are parties to the Treaties of Peace with Bulgaria, Hungary and Romania, to submit to the Secretary-General all evidence which they now hold or which may become available in future in relation to this question;

"6. Likewise invites the Secretary-General to notify the Members of the United Nations of any information he may receive in connexion with this question."

Case No. 9

The question of Morocco

138. The question of Morocco was on the provisional agenda of the sixth, seventh and eighth sessions of the General Assembly. It was included in the final agenda and discussed at the seventh and eighth sessions. The action taken by the Assembly at the three sessions is studied below.

a. ACTION TAKEN AT THE SIXTH SESSION

139. By communications 121/ dated 4, 6, 8, 9 and 10 October 1951, the representatives of six Member States requested the General Assembly to include in the agenda of its sixth session an item entitled "Violation by France in Morocco of the principles of the United Nations Charter and the Declaration of Human Rights".

140. Their request was considered by the General Committee at its 75th and 76th meetings. At the 75th meeting the representative of France expressed the view that a discussion of the item in the Assembly would not serve the interests of the Moroccan people. He made it clear that he was not dealing with "the question from the standpoint of the provisions of Article 2, paragraph 7, of the Charter". 122/ At its 76th meeting, the General Committee recommended 123/ to the Assembly "that consideration of the question of placing the item/ ... on the final agenda of the General Assembly be postponed for the time being".

141. At its 354th plenary meeting on 13 December 1951, the Assembly adopted 124/ the recommendation of the General Committee by 28 votes to 23, with 7 abstentions. No further action was taken during the sixth session.

121/ G A (VI), Annexes, a.i. 7, pp. 4-6, A/1894, A/1898, A/1904, A/1908, A/1909 and A/1918.

122/ G A (VI), General Com., 75th mtg., para. 68.

123/ G A (VI), General Com., 76th mtg., para. 32.

124/ G A (VI), Plen., 354th mtg., para. 290.

b. ACTION TAKEN AT THE SEVENTH SESSION; RESOLUTION 612 (VII)

142. By a letter 125/ dated 3 September 1952, the representatives of thirteen Member States requested the General Assembly to include in the agenda of its seventh session an item entitled "The question of Morocco". These representatives claimed that certain measures taken by the French Administration in Morocco were contrary to the Charter provisions on human rights and to the principle of self-determination. They also contended that France had violated Morocco's sovereignty, which it had undertaken to respect in signing the Act of Algieras and the Protectorate Treaty. Finally, they maintained that the situation in Morocco was a "menace to international peace in that part of the world".

143. The request submitted by the thirteen Member States was considered by the General Committee at its 79th meeting. At that meeting, the representative of France stated 126/ that his Government found the interference of the United Nations in matters which were exclusively within its national jurisdiction wholly unacceptable, and announced that he would not take part in any discussion or in any vote on the inclusion of the item. At the same meeting, the Committee decided 127/ without a vote to recommend the inclusion of the item in the agenda of the seventh session. At its 380th plenary meeting on 16 October 1952, the General Assembly adopted 128/ the Committee's recommendation without debate and referred the question to the First Committee.

144. By a letter 129/ dated 4 December 1952, the representative of France informed the Chairman of the First Committee that the "French Government could not accept any interference by the United Nations in its relations with ... Morocco" and that "the French delegation ... will be unable to participate in the impending discussions /on the item/".

145. During the discussion of the item in the Committee, several representatives contended that the matter fell essentially within France's domestic jurisdiction and that the United Nations was not competent to deal with it. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the expression "matters which are essentially within the domestic jurisdiction of any state." (paragraph 388);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399, 400 and 401);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 409);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraphs 423 and 424);

Whether a matter governed by the Charter provisions on self-determination can fall essentially within domestic jurisdiction (paragraph 428);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

125/ G A (VII), Annexes, a.i. 65, pp. 1-5, A/2175 and Add.1 and 2.

126/ G A (VII), General Com., 79th mtg., para. 18.

127/ Ibid.

128/ G A (VII), Plen., 380th mtg., para. 202.

129/ G A (VII), Annexes, a.i. 65, p. 5, A/C.1/737.

146. In spite of the objections raised on the grounds of Article 2 (7), the General Assembly, acting on the report of the First Committee, adopted 130/ at its 407th plenary meeting on 19 December 1952, resolution 612 (VII) by 45 votes to 3, with 11 abstentions.

147. The preamble to the resolution quoted from Articles 1 (2), 1 (4) and 11 (1) of the Charter. The operative part read:

"The General Assembly,

".

"1. Expresses the confidence that, in pursuance of its proclaimed policies, the Government of France will endeavour to further the fundamental liberties of the people of Morocco, in conformity with the Purposes and Principles of the Charter;

"2. Expresses the hope that the parties will continue negotiations on an urgent basis towards developing the free political institutions of the people of Morocco, with due regard to legitimate rights and interests under the established norms and practices of the law of nations; 131/

"3. Appeals to the parties to conduct their relations in an atmosphere of goodwill, mutual confidence and respect and to settle their disputes in accordance with the spirit of the Charter, thus refraining from any acts or measures likely to aggravate the present tension."

148. The resolution made no mention of the objections raised on the grounds of Article 2 (7).

C. ACTION TAKEN AT THE EIGHTH SESSION

149. By a letter 132/ dated 9 July 1953, the representatives of fifteen Member States requested the Assembly to include the question of Morocco in the agenda of its eighth session. In the absence of any objections, the Assembly included 133/ the question in its agenda without a vote at its 435th plenary meeting on 17 September 1953, and referred it to the First Committee.

150. As had been the case in the previous year, the French representative, invoking Article 2 (7), informed 134/ the Chairman of the First Committee that he would be unable to participate in the discussion on the question.

130/ G A (VII), Plen., 407th mtg., para. 50.

131/ The text of paragraph 2 as submitted to the Assembly by the First Committee read:

"Expresses the hope that the parties will continue negotiations on an urgent basis with a view to bringing about self-government for Moroccans in the light of the relevant provisions of the Charter of the United Nations;" (G A (VII), Annexes, a.i. 65, pp. 12 and 13, A/2325, para. 11.

"At its 407th plenary meeting on 19 December 1952, the Assembly by 29 votes to 8, with 22 abstentions, adopted an amendment which became the final text of paragraph 2 (G A (VII), Plen., 407th mtg., para. 49).

132/ G A (VIII), Annexes, a.i. 57, pp. 1 and 2, A/2406.

133/ G A (VIII), Plen., 435th mtg., para. 67.

134/ G A (VIII), Annexes, a.i. 57, p. 4, A/C.1/L.58.

151. During the discussion of the item in the Committee, several representatives contended that the matter fell essentially within France's domestic jurisdiction and that the United Nations was not competent to deal with it. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399, 400 and 401);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraphs 409 and 410);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraph 424);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

152. In spite of the objections raised on the grounds of Article 2 (7), the Committee, by 31 votes to 18, with 9 abstentions, adopted 135/ at its 640th meeting a draft resolution which stated that:

"The General Assembly,

"

"Recognizing the right of the people of Morocco to complete self-determination in conformity with the Charter,

"Renews its appeal for the reduction of tension in Morocco and urges that the right of the people of Morocco to free democratic political institutions be ensured." 136/

153. In the Assembly, the draft resolution adopted by the First Committee failed to obtain the required two-thirds majority 137/ at the 455th plenary meeting on 3 November 1953, and was therefore rejected.

154. No further action was taken at the eighth session.

Case No. 10

The Tunisian question

155. The Tunisian question was discussed by the General Assembly at its seventh and eighth sessions. The action taken at these sessions is studied below.

a. ACTION TAKEN AT THE SEVENTH SESSION; RESOLUTION 611 (VII)

156. By a letter 138/ dated 30 July 1952 the representatives of thirteen Member States, invoking Article 11 (2), requested the General Assembly to include in the agenda of its seventh session an item entitled "The Tunisian question". These

135/ G A (VIII), 1st Com., 640th mtg., para. 45.

136/ G A (VIII), Annexes, a.i. 57, p. 6, A/2526, para. 11.

137/ There were 32 votes in favour of the operative part, 22 against and 5 abstentions. (G A (VIII), 455th mtg., paras. 61 and 125)

138/ G A (VII), Annexes, a.i. 60, pp. 1-4, A/2152.

representatives claimed that the French Administration in Tunisia had suppressed civil liberties and had violated human rights and the principle of self-determination. They also contended that France had violated Tunisia's sovereignty, which it had undertaken to respect in signing the Protectorate Treaties.

157. The request submitted by the thirteen Member States was considered by the General Committee at its 79th meeting. At that meeting, the representative of France stated 139/ that his Government found the interference of the United Nations in matters which were exclusively within its national jurisdiction wholly unacceptable, and announced that he would not take part in any discussion or in any vote on the inclusion of the item. At the same meeting, the Committee decided 140/ without a vote to recommend the inclusion of the item in the agenda of the seventh session. At its 380th plenary meeting on 16 October 1952, the General Assembly adopted 141/ the Committee's recommendation without debate and referred the matter to the First Committee.

158. By a letter 142/ dated 4 December 1952, the representative of France informed the Chairman of the First Committee that "the French Government could not accept any interference by the United Nations in its relations with Tunisia" and that "the French delegation ... will be unable to participate in the impending discussions on the item".

159. During the discussion of the item in the Committee, several representatives contended that the matter fell essentially within France's domestic jurisdiction and that the United Nations was not competent to deal with it. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the expression "matters which are essentially within the domestic jurisdiction of any State" (paragraph 388);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399, 400 and 401);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 409);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraphs 423 and 424);

Whether a matter governed by the Charter provisions on self-determination can fall essentially within domestic jurisdiction (paragraph 428);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

160. In spite of the objections raised on the grounds of Article 2 (7), the General Assembly, acting on the report of the First Committee, adopted 143/ at its 404th

139/ G A (VII), General Com., 79th mtg., para. 18.

140/ G A (VII), General Com., 79th mtg., para. 18.

141/ G A (VII), Plen., 380th mtg., para. 202.

142/ G A (VII), Annexes, a.i. 60, p. 5, A/C.1/737.

143/ G A (VII), Plen., 404th mtg., para. 62.

plenary meeting on 17 December 1952, resolution 611 (VII) by 44 votes to 3, with 8 abstentions.

161. The preamble to that resolution, which was, *mutatis mutandis*, identical to the preamble to resolution 612 (VII), quoted from Articles 1 (2), 1 (4) and 11 (1) of the Charter.

162. The operative part read:

"The General Assembly,

"

"1. Expresses its confidence that, in pursuance of its proclaimed policies, the Government of France will endeavour to further the effective development of the free institutions of the Tunisian people, in conformity with the Purposes and Principles of the Charter;

"2. Expresses the hope that the parties will continue negotiations on an urgent basis with a view to bringing about self-government for Tunisians in the light of the relevant provisions of the Charter of the United Nations;

"3. Appeals to the parties concerned to conduct their relations and settle their disputes in accordance with the spirit of the Charter and to refrain from any acts or measures likely to aggravate the present tension."

163. The resolution made no reference to the objections raised on the grounds of Article 2 (7).

b. ACTION TAKEN AT THE EIGHTH SESSION

164. By a letter 144/ dated 13 July 1953, the representatives of fifteen Member States requested the General Assembly to include the Tunisian question in the agenda of its eighth session. In the absence of any objections, the Assembly included 145/ the question in its agenda without a vote at its 435th plenary meeting on 17 September 1952, and referred it to the First Committee.

165. As had been the case in the previous year, the representative of France, invoking Article 2 (7), informed 146/ the Chairman of the First Committee that he would be unable to participate in the discussion of the question.

166. During the discussion of the item in the Committee, several representatives contended that the matter fell essentially within France's domestic jurisdiction and that the United Nations was not competent to deal with it. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399, 400 and 401);

144/ G A (VIII), Annexes, a.i. 56, pp. 1 and 2, A/2405.

145/ G A (VIII), Plen., 435th mtg., para. 67.

146/ G A (VIII), Annexes, a.i. 57, p. 4, A/C.1/L.58.

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 410);

Whether a matter governed by the Charter provisions regarding Non-Self-Governing Territories can fall essentially within domestic jurisdiction (paragraph 424);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

167. In spite of the objections raised on the grounds of Article 2 (7), the Committee, by 29 votes to 22, with 5 abstentions, adopted 147/ at its 647th meeting a draft resolution 148/ which stated that:

"The General Assembly,

"

"Convinced that full effect should be given to the sovereignty of the people of Tunisia by the exercise, as early as possible, of their legitimate rights to self-determination and self-government in conformity with the Charter,

"1. Recommends that all necessary steps be taken to ensure the realization by the people of Tunisia of their right to full sovereignty and independence; "

168. At its 457th plenary meeting on 11 November 1953, the General Assembly, by 32 votes in favour, 16 against and 11 abstentions, adopted an amendment 149/ to that draft resolution. The amendment substituted for paragraph 1, quoted above, the following text:

"1. Recommends that negotiations between France and Tunisia be undertaken to ensure the realization by the people of Tunisia of their right to self-determination."

169. As amended, the draft resolution failed 150/ to obtain the necessary two-thirds majority and was therefore rejected.

170. No further action was taken at the eighth session.

147/ G A (VIII), 1st Com., 647th mtg., para. 26.

148/ G A (VIII), Annexes, a.i. 56, p. 5, A/2530, para. 7.

149/ G A (VIII), Plen., 457th mtg., para. 150.

150/ There were 31 votes in favour, 18 against and 10 abstentions. (G A (VII), Plen., 457th meeting, para. 152)

Case No. 11

*The question of race conflict in the
Union of South Africa*

171. At the seventh session the General Assembly discussed the question of race conflict in the Union of South Africa and established a Commission to study the racial situation in that State. At the eighth session it considered the Commission's report and again discussed the question. The action taken by the Assembly at the two sessions and the Commission's report are studied below.

a. ACTION TAKEN AT THE SEVENTH SESSION

172. By a letter 151/ dated 15 September 1952, the representatives of thirteen Member States requested the Assembly to include in the agenda of its seventh session an item entitled "The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa". These representatives contended that by its racial policy the Government of the Union was "creating a dangerous and explosive situation, which constitutes both a threat to international peace and a flagrant violation of the basic principles of human rights and fundamental freedoms which are enshrined in the Charter".

1. Inclusion of the item in the agenda and decisions concerning competence

173. During the discussion on the adoption of the agenda the representative of South Africa, maintaining that the item proposed by the thirteen Member States fell essentially within the Union's domestic jurisdiction, submitted 152/ the following motion:

"Having regard to the provisions of Article 2, paragraph 7, of the Charter, the General Assembly decides that it is not competent to consider the item ...".

174. At the 381st plenary meeting, on 17 October 1952, the President ruled 153/ that "under rule 80 154/ ~~Of the rules of procedure~~ the motion regarding the competence of the General Assembly should be put to the General Assembly before the question of the inclusion or non-inclusion of this item in the agenda". The President's ruling was challenged 155/ on the ground that the Assembly would be in a position to decide on the question of competence only after the item had been discussed; it was therefore necessary to place the item on the agenda before considering the motion submitted by South Africa. By 41 votes to 10, with 8 abstentions, the Assembly reversed 156/ the President's ruling and, without pronouncing itself on the question of competence, included 157/ the item in the agenda and referred it to the Ad Hoc Political Committee.

151/ G A (VII), Annexes, a.i. 66, pp.1-3, A/2183.

152/ G A (VII), Plen., 381st mtg., paras. 5-67.

153/ G A (VII), Plen., 381st mtg., para. 150.

154/ Present rule 81 (A/520/Rev.3, United Nations Publications, Sales No. 1954.1.17)

155/ G A (VII), Plen., 381st mtg., paras. 74, 136, 141, 163 and 164.

156/ G A (VII), Plen., 381st mtg., para. 150.

157/ The item was placed on the agenda by 45 votes to 6, with 8 abstentions (G A (VII), Plen., 381st mtg., para. 167).

175. At the beginning of the discussion in the Committee, the representative of South Africa restated his Government's reasons for contending that the item fell essentially within the Union's domestic jurisdiction. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the term "to intervene" (paragraphs 342 and 343);

Whether a recommendation - in general or to a particular State - constitutes intervention (paragraph 359);

Whether the establishment by the General Assembly of a commission to study the racial situation prevailing in a Member State constitutes intervention (paragraph 372);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraphs 409 and 410);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 413, 414 and 415);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

176. At the 13th meeting of the Committee the representative of South Africa submitted the following motion: 158/

"Having regard to the provisions of Article 2, paragraph 7, of the Charter of the United Nations,

"The Ad Hoc Political Committee finds that it has no competence to consider the item ...".

177. The motion was put to the vote at the end of the debate on the item at the 21st meeting of the Committee and was rejected 159/ by 45 votes to 6 with 8 abstentions. At the same meeting the Committee adopted two draft resolutions which the General Assembly considered at its 401st plenary meeting on 5 December 1952.

178. At that meeting the representative of South Africa moved 160/ that:

"The General Assembly,

"Having regard to the provisions of Article 2, paragraph 7, of the Charter,

"Finds that it is unable to adopt the /resolutions submitted by the Ad Hoc Political Committee/".

179. The Assembly, by 43 votes to 6, with 9 abstentions, rejected 161/ the motion made by the representative of South Africa. It then proceeded to adopt the two resolutions which had been submitted by the Ad Hoc Political Committee.

158/ G A (VII), Ad Hoc Pol. Com., 13th mtg., para. 14, A/AC.61/L.6 and Corr.1.

159/ G A (VII), Ad Hoc Pol. Com., 21st mtg., para. 34.

160/ G A (VII), Plen., 401st mtg., para. 80, A/L.124.

161/ G A (VII), Plen., 401st mtg., para. 89.

11. Resolution 616 A (VII)

180. The first resolution, numbered 616 A (VII), was adopted 162/ by 35 votes to 1, with 23 abstentions.

181. The preamble to that resolution took note of the request submitted by thirteen Member States, quoted the provision on human rights contained in Article 1 (3) of the Charter and referred to resolutions 103 (I) 163/, 395 (V) 164/ and 511 (VI) 165/.

182. The operative part established

"a Commission, consisting of three members, to study the racial situation in the Union of South Africa in the light of the Purposes and Principles of the Charter, with due regard to the provision of Article 2, paragraph 7, as well as the provisions of Article 1, paragraphs 2 and 3, Article 13, paragraph 1 b, Article 55 c, and Article 56 of the Charter, and the resolutions of the United Nations on racial persecution and discrimination, and to report its conclusions to the General Assembly at its eighth session;"

183. Finally the resolution invited "the Government of the Union of South Africa to extend its full co-operation to the Commission" and decided "to retain the question on the provisional agenda of the eighth session".

11. Resolution 616 B (VII)

184. The second resolution, numbered 616 B (VII), was adopted 166/ by 24 votes to 1, with 34 abstentions.

185. The preamble took note of the request 167/ submitted by 13 Member States, referred to Article 1 (3) and recalled resolution 103 (I) 168/.

186. The first two paragraphs of the operative part contained a general declaration on the policies to be pursued in a multi-racial society. No particular State was mentioned. The third and last paragraph referred to Article 55 c in the following terms:

"The General Assembly,

".

. "3. Solemnly calls upon all Member States to bring their policies into conformity with their obligation under the Charter to promote the observance of human rights and fundamental freedoms."

187. Neither resolution made any reference to the objections raised by the representative of South Africa on the grounds of Article 2 (7).

162/ G A (VII), Plen., 401st mtg., para. 98.

163/ See paras. 61 and 65.

164/ See paras. 60 to 63.

165/ See paras. 64 to 66.

166/ G A (VII), Plen., 401st mtg., para. 105.

167/ See para. 172.

168/ See paras. 61 and 65.

b. REPORT OF THE COMMISSION ON THE RACIAL SITUATION IN
THE UNION OF SOUTH AFRICA

188. The Commission established by resolution 616 A (VII) submitted its report to the General Assembly on 3 October 1953. The report dealt both with the question of competence and with the question of substance.

189. On the question of competence, the report concluded that:

"The Assembly, assisted by the commissions which it establishes and authorizes, is permitted by the Charter to undertake any studies and make any recommendations to Member States which it may deem necessary in connexion with the application and implementation of the principles to which the Member States have subscribed by signing the Charter. That universal right of study and recommendation is absolutely incontestable with regard to general problems of human rights and particularly of those protecting against discrimination for reasons of race, sex, language or religion.

"The exercise of the functions and powers conferred on the Assembly and its subsidiary organs by the Charter does not constitute an intervention prohibited by Article 2 (7) of the Charter." 169/

190. On the question of substance, the report concluded that the racial policy of the Union Government was contrary to the Charter and the Universal Declaration of Human Rights and that the continuance of this policy was likely to impair friendly relations among nations. 170/

c. ACTION TAKEN AT THE EIGHTH SESSION

191. Pursuant to resolution 616 A (VII), the following item was included in the provisional agenda of the eighth session: "The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa: report of the Commission appointed to study the racial situation in the Union of South Africa".

1. Inclusion of the item in the agenda and decisions concerning competence

192. During the discussion on the adoption of the agenda, the representative of South Africa, invoking Article 2 (7), objected to the inclusion of the question of race conflict. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347 and 352).

193. Despite the objections of the representative of South Africa, the General Assembly, by 46 votes to 7 with 7 abstentions, at its 435th plenary meeting on 17 September 1953, included 171/ the question of race conflict in its agenda and referred it to the Ad Hoc Political Committee.

169/ G A (VIII), Suppl. No. 16, para. 893.

170/ G A (VIII), Suppl. No. 16, paras. 895-909.

171/ G A (VIII), Plen., 435th mtg., para. 66.

194. At the beginning of the discussion in the Committee, the representative of South Africa restated his Government's reasons for contending that the question fell essentially within the Union's domestic jurisdiction and that the Assembly was not competent to deal with it. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the term "to intervene" (paragraphs 342 and 343);

Whether a recommendation - in general or to a particular State - constitutes intervention (paragraphs 359 and 360);

Whether a matter governed by the Charter in general can fall essentially within domestic jurisdiction (paragraph 410);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraphs 413 and 414);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 434).

195. At the 32nd meeting of the Committee the representative of South Africa submitted the following draft resolution: 172/

"The Ad Hoc Political Committee,

"Noting that the matters to which the item entitled 'The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa' relates and which are referred to in documents A/2183 and A/2505, such as the policies and legislation of a Member State in regard to land tenure, conditions of employment in public services, regulation of transport, suppression of Communism, combat service in the armed forces, nationality, the franchise, movement of population, residence, immigration, the work and practice of the professions, social security, education, public health, criminal law, taxation, housing, regulation of the liquor traffic, regulation of labour and wages, marriage, food subsidies, local government, pensions, workmen's compensation, are among matters which are essentially within the domestic jurisdiction of a Member State,

"Noting that by Article 2 (7) of the Charter nothing contained in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State,

"Decides, the Ad Hoc Political Committee has no competence to intervene in the matters listed above to which the said item relates."

196. At the 34th meeting of the Committee as reported in the summary of the record below, the Chairman stated 173/ that

"when the General Assembly included an item in its agenda, it did not prejudice the question of its competence. The practice of the United Nations provided many precedents for that view. It had always been agreed that the question of competence was considered by the committee concerned or by the Assembly

172/ A/AC.72/L.13.

173/ G A (VIII), Ad Hoc Pol. Com., 34th mtg., para. 55.

itself. For that reason, he had circulated the South African draft resolution concerning the question of competence and had made it clear that the general debate could deal both with the report mentioned in the agenda item and with the South African draft resolution. When the Committee reached the voting stage, he would first put to the vote the draft resolution regarding competence."

197. That statement was not challenged and the Committee proceeded in the way suggested by the Chairman.

198. The draft resolution submitted by the representative of South Africa was put to the vote at the end of the Committee's debate on the item at its 42nd meeting and rejected 174/ by 42 votes to 7, with 7 abstentions. It should be noted, however, that several of the representatives who commented on the draft resolution stated 175/ that they were opposed to it because the matters listed in the preamble were not on the Committee's agenda; hence, the question whether those matters fell essentially within domestic jurisdiction was not relevant.

199. At the same meeting the Committee adopted a draft resolution dealing with the substance of the question, which it submitted to the General Assembly.

200. At the 469th plenary meeting on 8 December 1953, the representative of South Africa submitted the following draft resolution: 176/

"The General Assembly,

"Having regard to Article 2, paragraph 7, of the Charter,

"Decides that it has no competence to adopt ... [the draft resolution submitted by the Ad Hoc Political Committee],"

The Assembly rejected 177/ the draft resolution submitted by the representative of South Africa by 42 votes to 8, with 10 abstentions.

ii. Resolution 721 (VIII)

201. After the rejection of the draft resolution submitted by the representative of South Africa, the Assembly, by 38 votes to 11, with 11 abstentions, adopted 178/ at its 469th plenary meeting on 8 December 1953, the resolution which had been submitted by the Ad Hoc Political Committee. The resolution was subsequently numbered 721 (VIII).

202. The preamble to the resolution took note of the conclusions on substance presented in the report of the Commission on the racial situation in the Union of South Africa. The conclusions on competence were not mentioned.

203. Paragraph 1 of the operative part reaffirmed resolutions 103 (I), 377 A (V), section E, and 616 B (VII). It referred to Article 55 c of the Charter in the

174/ G A (VIII), Ad Hoc Pol. Com., 42nd mtg., para. 60.

175/ G A (VIII), Ad Hoc Pol. Com., 32nd mtg., paras. 44-47, 37th mtg., para. 4; 42nd mtg., paras. 27, 30, 31, 33, 47 and 48.

176/ G A (VIII), Plen., 469th mtg., para. 26, A/L.172.

177/ G A (VIII), Plen., 469th mtg., para. 52.

178/ G A (VIII), Plen., 469th mtg., para. 66.

following terms, taken from section E of resolution 377 A (V): "lasting peace depends ... especially upon respect for and observance of human rights and fundamental freedoms for all".

204. Paragraphs 2 and 3 expressed appreciation of the Commission's work and provided for the replacement of those of its members who would be unable to continue their membership. Paragraph 4 read:

"The General Assembly,

".

"4. Requests the Commission:

"(a) To continue its study of the development of the racial situation in the Union of South Africa:

"(i) With reference to the various implications of the situation for the populations affected;

"(ii) In relation to the provisions of the Charter and, in particular, to Article 14;

"(b) To suggest measures which would help to alleviate the situation and promote a peaceful settlement;"

205. Finally, paragraphs 5 and 6 invited "the Government of the Union of South Africa to extend its full co-operation to the Commission" and requested "the Commission to report to the General Assembly at its ninth session".

206. The resolution made no reference to the objections raised on the grounds of Article 2 (7).

B. General Assembly and Economic and Social Council

207. This section deals with two cases, numbered 12 and 13, which were discussed both by the General Assembly and by the Economic and Social Council.

Case No. 12

Draft international covenants on Human Rights

208. Pursuant to General Assembly resolution 217 F (III) the Commission on Human Rights, at its sixth session, submitted to the Economic and Social Council a Draft International Covenant on Human Rights. 179/

209. Articles 1 to 18 of the draft defined the human rights which each State party to the Covenant would undertake "to respect and to ensure to all individuals within its territory" 180/. Articles 19 to 41 dealt with the measures of implementation of Articles 1 to 18. They provided for the establishment of a Human Rights Committee and stipulated that if a State party to the Covenant considered that another State

179/ ESC (XI), Suppl. No. 5 (E/1681), annex I.

180/ Article 1 of the draft Covenant.

party was not giving effect to a provision of the Covenant it could communicate directly with that other State and, if the matter was not adjusted to the satisfaction of both, either State had the right to refer the matter to the Human Rights Committee. The Committee was empowered to "ascertain the facts and make available its good offices to the States concerned with a view to a friendly solution of the matter". 181/

210. By resolution 303 I (X) the Economic and Social Council transmitted the draft Covenant to the General Assembly, which considered it at the fifth session.

211. During that consideration the USSR submitted to the Third Committee and subsequently to the Assembly an amendment 182/ which stated that:

"The General Assembly,

".

"Recognizing that the implementation of the provisions of the Covenant on Human Rights falls entirely within the domestic jurisdiction of States;

".

"Considers that articles 19 to 41 of the draft Covenant should be deleted, since their inclusion would constitute an attempt at intervention in the domestic affairs of States and an encroachment on their sovereignty."

212. Representatives opposing the amendment observed that human rights were governed by the Charter and, as regards the States parties to the Covenant, would also be governed by the provisions of the Covenant after its entry into force. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraph 399);

Whether a matter governed by the Charter provisions on human rights can fall essentially within domestic jurisdiction (paragraph 413).

213. Both the Third Committee, at its 313th meeting, and the General Assembly, at its 317th meeting on 4 December 1950, rejected 183/ the amendment submitted by the USSR.

181/ Article 41 of the draft Covenant.

182/ In the Third Committee, the text (G A (V), Annexes, a.i. 63, pp. 17 and 18, A/C.3/L.96) was submitted in the form of an amendment to a joint draft resolution presented by Brazil, Turkey and the United States (*ibid.*, p. 11, A/C.3/L.76). In the General Assembly, the text (*ibid.*, pp. 35 and 36, A/1576) was submitted in the form of an amendment to the draft resolution adopted by the Third Committee (*ibid.*, pp. 33 and 34, A/1559).

183/ The Third Committee rejected the amendment submitted by the USSR as a whole by 26 votes to 8 with 15 abstentions (G A (V), 3rd Com., 313th mtg., para. 67). The Assembly rejected the first paragraph of the proposal by 37 votes to 7 with 14 abstentions (G A (V), vol. I, Plen., 317th mtg., para. 150). It rejected the second paragraph by 43 votes to 5, with 9 abstentions (*ibid.*, para. 163).

214. At its 317th meeting on 4 December 1950, the Assembly adopted resolution 421 (V), 184/ which called upon "the Economic and Social Council to request the Commission on Human Rights to continue to give priority in its work to the completion of the draft Covenant and measures for its implementation". Resolution 421 (V) was considered by the Economic and Social Council at its twelfth session. During that consideration the representative of the USSR submitted a draft resolution 185/ under which the Council would have instructed the Commission on Human Rights:

"

"3. To delete from the draft covenant on human rights the provisions concerning implementation contained in articles 19 to 41 thereof, as they provide for methods of supervising the implementation of the covenant which constitute an attempt at intervention in the domestic affairs of States and at encroachment on their sovereignty."

Without voting on the draft resolution submitted by the USSR, the Council transmitted it to the Commission on Human Rights. 186/

215. The Commission discussed the draft resolution submitted by the USSR at its seventh session. The arguments advanced during that discussion are summarized below in the Analytical Summary of Practice (paragraphs 399 and 413). They were similar to those advanced at the fifth session of the General Assembly (see paragraph 212). At its 213th meeting the Commission rejected 187/ the draft resolution submitted by the USSR by 15 votes to 2 with 1 abstention.

216. Pursuant to General Assembly resolution 543 (VI), adopted in the interval between the Commission's seventh and eighth sessions, the Commission proceeded at its eighth, ninth and tenth sessions "with the drafting of two covenants, one on civil and political rights and the other on economic, social and cultural rights". 188/ The measures of implementation described in paragraph 209 formed the basis of part IV of the draft Covenant on Civil and Political Rights.

217. At the ninth session of the Commission the representatives of Chile, Egypt and the Philippines submitted an amendment 189/ to part IV which gave rise to a discussion of the problem of domestic jurisdiction. The amendment read:

"Add the following paragraph to article 55 of part IV of the draft Covenant on Civil and Political Rights

"If the Human Rights Committee 190/ considers that the information supplied is not sufficient it may, by a vote of two thirds of all its members, conduct an enquiry within the metropolitan area or Non-Self-Governing Territory of any State complained against. The State concerned shall afford full facilities necessary for the efficient conduct of the investigation."

184/ G A resolution 421 (V) was adopted by 38 votes to 7, with 12 abstentions (G A (V), Plen., vol. I, 317th mtg., para. 170).

185/ E S C (XII), Annexes, a.i. 12, pp. 8 and 9, E/L.137.

186/ See E S C resolution 349 (XII) and E S C (XII), 442nd mtg., para. 48.

187/ E/CN.4/SR.213, p. 9.

188/ E S C (XIV), Suppl. No. 4 (E/2256), para. 97.

189/ E S C (XVI), Suppl. No. 8 (E/2447), annex III, para. 141.

190/ See para. 209.

Article 55 read:

"In any matter referred to it the Committee may call upon the States concerned to supply any relevant information."

218. The amendment was opposed 191/ by those representatives who, holding that all the measures of implementation contained in part IV constituted intervention in domestic jurisdiction, had supported the text submitted by the USSR at the seventh session of the Commission. It was also opposed 192/ by representatives who maintained that the particular measure of implementation proposed in the amendment constituted intervention in domestic jurisdiction. The arguments advanced in support of the amendment were based on the contention that human rights were governed by the Charter and, as regards the States parties to the Covenant, would also be governed by the provisions of the Covenant after its entry into force. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraph 399);

Whether a matter governed by the Charter can fall essentially within domestic jurisdiction (paragraph 409).

219. At its 388th meeting, the Commission, by 9 votes to 5 with 1 abstention, rejected 193/ the amendment and, by 12 votes to 3, approved 194/ the text of Article 55 as quoted above. In a second reading of the draft Covenant, the Commission, at its 409th meeting, renumbered article 55 as article 42. 195/

220. At the end of its tenth session the Commission submitted to the Economic and Social Council the two draft Covenants on Human Rights which the Council transmitted by resolution 545 B I (XVIII) to the General Assembly at its ninth session.

Case No. 13

Recommendations concerning international respect for the self-determination of peoples

221. By resolution 545 (VI) the General Assembly requested "the Commission on Human Rights to prepare recommendations concerning international respect for the self-determination of peoples". Pursuant to that resolution the Commission on Human Rights, at its eighth session, adopted 196/ two resolutions 197/ which the Economic and Social Council transmitted 198/ to the General Assembly at its seventh session for adoption.

191/ See the results of the roll-call vote on the amendment: E/CN.4/SR.388, p. 13.

192/ E/CN.4/SR.388, pp. 6 and 7.

193/ E/CN.4/SR.388, p. 13.

194/ E/CN.4/SR.388, p. 13.

195/ A/CN.4/SR.409, p. 20. At that meeting the Commission revised the end of the French text of Article 42 to read "... de lui fournir toute information pertinente" instead of "de lui fournir tous les éléments d'information qu'il juge à propos".

196/ E S C (XIV), Suppl. No. 4 (E/2256), paras. 75-90.

197/ Ibid., para. 91.

198/ See E S C resolution 440 B (XIV).

222. Paragraph 2 of the first of those resolutions read:

"The General Assembly

"Recommends that

"

"2. The States Members of the United Nations shall recognize and promote the realization of the right of self-determination of the people of Non-Self-Governing and Trust Territories who are under their administration; and grant this right on a demand for self-government on the part of these people, the popular wish being ascertained in particular through a plebiscite held under the auspices of the United Nations."

223. In the Assembly objections were raised on the grounds of Article 2 (7) to that paragraph. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether a matter governed by the Charter provisions on self-determination can fall essentially within domestic jurisdiction (paragraphs 428 and 429).

224. Despite these objections the General Assembly, at its 403rd meeting, on 16 December 1952, certain amendments having been made to paragraph 2, adopted 199/ resolution 637 A (VII), by 40 votes to 14, with 6 abstentions.

225. The preamble to the resolution referred to the provisions on self-determination contained in Articles 1 (2) and 55 of the Charter. Paragraph 2 of the operative part, which was based on the provision quoted in paragraph 222, read:

"The General Assembly recommends that:

"

"2. The States Members of the United Nations shall recognize and promote the realization of the right of self-determination of the peoples of Non-Self-Governing and Trust Territories who are under their administration and shall facilitate the exercise of this right by the peoples of such Territories according to the principles and spirit of the Charter of the United Nations in regard to each Territory and to the freely expressed wishes of the peoples concerned, the wishes of the people being ascertained through plebiscites or other recognized democratic means, preferably under the auspices of the United Nations;"

226. At the same meeting the General Assembly adopted resolution 637 C (VII), requesting "the Economic and Social Council to ask the Commission on Human Rights to continue preparing recommendations concerning international respect for the right of peoples to self-determination". By resolution 472 (XV) the Council transmitted the Assembly's request to the Commission on Human Rights. At its tenth session, the Commission prepared the recommendations requested by the Assembly. These recommendations were contained in two resolutions 200/ - numbered I and II - which the

199/ G A (VII), Plen., 403rd mtg., para. 210.

200/ E S C (XVIII), Suppl. No. 7 (E/2573), annex IV, F.

Commission submitted to the Council at its eighteenth session and which the Council referred to its Social Committee.

227. During the discussion in the Social Committee, resolution II was criticized inter alia on the grounds of Article 2 (7). This resolution requested the Assembly to establish a commission with the following terms of reference:

"1. The Commission shall examine any situation resulting from the alleged denial or inadequate realization of the right of self-determination, which falls within the scope of Article 14 of the Charter and to which the Commission's attention is drawn by any ten Members of the United Nations;

"2. The Commission shall provide its good offices for the peaceful rectification of [the] ... situation".

228. The objections to resolution II raised on the grounds of Article 2 (7) are summarized below in the Analytical Summary of Practice. They related to the following question:

Whether a matter governed by the Charter provisions on self-determination can fall essentially within domestic jurisdiction (paragraph 429).

229. At its 820th meeting the Economic and Social Council decided 201/ to refer resolutions I and II back to the Commission on Human Rights "so that [the Commission] may reconsider them in the light of the Council's discussions".

C. Security Council

230. This section deals with eight cases, numbered 14 to 21, inclusive, which were discussed by the Security Council from 1946 to 1953.

Case No. 14

The Spanish question

231. By a letter 202/ dated 9 April 1946, the representative of Poland, referring to Articles 34 and 35 of the Charter, brought the situation in Spain to the attention of the Security Council. He expressed the view that "the activities of the Franco Government [had] already caused international friction and endangered international peace and security".

232. At its 32nd meeting on 15 April 1946, the Security Council included 203/ the Spanish question in its agenda without discussion.

201/ E S C resolution 545 G (XVIII).

202/ S C, 1st yr., 1st Series, Suppl. No. 2, p. 55, annex 3 b (S/34).

203/ S C, 1st yr., 1st Series, No. 2, 32nd mtg., p. 122.

a. RESOLUTION OF 29 APRIL 1946 ESTABLISHING THE
SUB-COMMITTEE ON THE SPANISH QUESTION

233. At the 34th meeting of the Security Council on 17 April 1946, the representative of Poland submitted a draft resolution calling upon all Member States to sever diplomatic relations with the Franco Government "in accordance with ... Articles 39 and 41 /Chapter VII/ of the Charter". 204/

234. The draft resolution submitted by the representative of Poland was opposed by several representatives who stated that no evidence had been adduced that the Franco régime constituted a threat to the peace or had committed a breach of the peace or an act of aggression. The provisions of Chapter VII of the Charter - and in particular Articles 39 and 41 - were therefore not applicable. Moreover, since the question of the nature of a State's political régime fell essentially within the domestic jurisdiction of that State, Article 2 (7) debarred the Security Council from dealing with the Spanish question also under Chapter VI. 205/

235. That contention was disputed by other representatives. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

The meaning of the expression "matters which are essentially within the domestic jurisdiction of any State" (paragraph 388);

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 435);

The meaning of the last phrase of Article 2 (7) (paragraph 443).

236. At the 35th meeting of the Council, the representative of Australia offered an amendment 206/ to the draft resolution submitted by the representative of Poland. The amendment provided for the appointment of a sub-committee of five members to "report to the Security Council ... on the following questions:

"1. Is the Spanish situation one essentially within the jurisdiction of Spain?

"2. Is the situation in Spain one which might lead to international friction or give rise to a dispute?

"3. If the answer to question 2 is 'Yes', is the continuance of the situation likely to endanger the maintenance of international peace and security?"

237. At the 37th meeting, the representative of Australia replaced his amendment by a draft resolution which, after further revision, was adopted 207/ by 10 votes in favour, none against, and 1 abstention, at the Council's 39th meeting on 29 April 1946. The explanations of vote indicated that the one abstention was based on grounds not related to Article 2 (7). 208/

204/ S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 167.

205/ S C, 1st yr., 1st Series, No. 2, 34th mtg., pp. 176 and 177; 35th mtg., pp. 180-181.

206/ S C, 1st yr., 1st Series, No. 2, 35th mtg., p. 198.

207/ S C, 1st yr., 1st Series, No. 2, 39th mtg., p. 245.

208/ Ibid., pp. 242-243.

238. At the same meeting, the representative of Poland agreed that his draft resolution should not be put to the vote until the Sub-Committee established under the draft resolution submitted by the representative of Australia had submitted its report. 209/

239. The preamble to the resolution adopted by the Council recalled that the situation in Spain had been brought to the Council's attention under Article 35. It also recalled "the unanimous moral condemnation of the Franco régime in the Security Council" and referred to the previous United Nations resolutions on Spain. 210/ Finally, it stated that the Council kept in mind "the views expressed by the members of the Security Council regarding the Franco régime".

240. The operative part 211/ read:

"The Security Council

".

"Hereby resolves: to make further studies in order to determine whether the situation in Spain has led to international friction and does endanger international peace and security, and if it so finds, then to determine what practical measures the United Nations may take.

"To this end, the Security Council appoints a Sub-Committee of five of its members and instructs this Sub-Committee to examine the statements made before the Security Council concerning Spain, to receive further statements and documents, and to conduct such inquiries as it may deem necessary, and to report to the Security Council before the end of May."

241. Unlike the amendment submitted by the representative of Australia the above resolution did not expressly instruct the Sub-Committee to determine whether the situation in Spain fell essentially within that State's domestic jurisdiction.

b. REPORT OF THE SUB-COMMITTEE ON THE SPANISH QUESTION

242. The Sub-Committee established by the resolution of 29 April 1946 submitted its report to the Council on 1 June 1946.

243. In the report, the Sub-Committee expressed the view that, since no threat to the peace had been established, Chapter VII of the Charter was not applicable to the situation in Spain. 212/ It held, however, that the continuance of that situation was likely to endanger the maintenance of international peace and security, within the meaning of Article 34 of Chapter VI. 213/ Moreover, it found that:

209/ S C, 1st yr., 1st Series, No. 2, 39th mtg., p. 242.

210/ See para. 13.

211/ S C, 1st yr., 1st Series, No. 2, 39th mtg., p. 244.

212/ S C, 1st yr., 1st Series, Special Suppl., p. 8, para. 22.

213/ S C, 1st yr., 1st Series, Special Suppl., p. 9, para. 24.

"the facts established by the evidence before the Committee are by no means of essentially local or domestic concern to Spain. What is imputed to the Franco régime is that it is threatening the maintenance of international peace and security and that it is causing international friction. The allegations against the Franco régime involve matters which travel far beyond domestic jurisdiction and which concern the maintenance of international peace and security and the smooth and efficient working of the United Nations as the instrument mainly responsible for performing this duty." 214/

244. The report concluded that "the Security Council is empowered under Article 36 /of Chapter VI/ to recommend appropriate procedures or methods of adjustment". 215/

245. Finally the report submitted the following concrete recommendations:

"... Having regard to the important powers of the General Assembly under Article 10 of the Charter, the Sub-Committee recommends as follows:

"(a) The endorsement by the Security Council of the principles contained in the declaration by the Governments of the United Kingdom, the United States and France, dated 4 March 1946. 216/

"(b) The transmitting by the Security Council to the General Assembly of the evidence and reports of this Sub-Committee, together with the recommendation that unless the Franco régime is withdrawn and the other conditions of political freedom set out in the declaration are, in the opinion of the General Assembly, fully satisfied, a resolution be passed by the General Assembly recommending that diplomatic relations with the Franco régime be terminated forthwith by each Member of the United Nations.

"(c) The taking of appropriate steps by the Secretary-General to communicate these recommendations to all Members of the United Nations and all others concerned." 217/

C. CONSIDERATION BY THE SECURITY COUNCIL OF THE
SUB-COMMITTEE'S REPORT

246. The Council considered the report of the Sub-Committee at its 44th, 45th, 46th and 47th meetings.

214/ S C, 1st yr., 1st Series, Special Suppl., pp. 1 and 2, para. 4.

215/ S C, 1st yr., 1st Series, Special Suppl., p. 10, para. 28.

216/ This declaration stated that "... the three Governments are hopeful that the Spanish people will not again be subjected to the horrors and bitterness of civil strife. On the contrary, it is hoped that leading patriotic and liberal-minded Spaniards may soon find means to bring about a peaceful withdrawal of Franco, the abolition of the Falange, and the establishment of an interim or caretaker government under which the Spanish people may have an opportunity freely to determine the type of government they wish to have". (S C, 1st yr., 1st Series, Special Suppl., pp. 76 and 77)

217/ S C, 1st yr., 1st Series, Special Suppl., p. 11, para. 31.

247. At the 45th meeting, the representative of Australia submitted a draft resolution 218/ under which the Council would resolve:

"To adopt the three recommendations of the Sub-Committee ... subject to the addition to recommendation (b), after the words 'each Member of the United Nations', of the following words: 'or alternatively such other action be taken as the General Assembly deems appropriate and effective under the circumstances prevailing at the time'."

248. Some representatives opposed the draft resolution submitted by the representative of Australia on the grounds of Article 2 (7). While not denying that the continuation of the situation in Spain was likely to endanger the maintenance of international peace, they contended that the situation fell essentially within Spain's domestic jurisdiction. 219/ The arguments concerning that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by the Charter provisions on the maintenance of international peace can fall essentially within domestic jurisdiction (paragraph 435);
The meaning of the last phrase of Article 2 (7) (paragraph 443).

249. The representative of the United Kingdom, one of the representatives opposing the draft resolution submitted by the representative of Australia on the grounds of Article 2 (7), offered the following amendment 220/ thereto:

"The Security Council resolves

"To adopt the three recommendations of the Sub-Committee ... subject to the deletion of paragraph (b), after the words 'reports of this Sub-Committee' and the addition of the words 'together with the minutes of the discussion of the case by the Security Council'."

250. At its 47th meeting on 18 June 1946, the Council rejected 221/ the amendment submitted by the representative of the United Kingdom by 6 votes to 2, with 3 abstentions.

251. At the same meeting the Council voted on the draft resolution submitted by the representative of Australia. There were 9 votes in favour, 1 against and 1 abstention. Since the negative vote was cast by a permanent member, the draft resolution was not adopted. 222/ In explaining his vote, the representative of that permanent member stated 223/ that in his opinion the situation in Spain constituted an actual threat to the peace and that the Security Council itself should call upon all Member States to sever diplomatic relations with the Franco Government instead of recommending that the General Assembly should do so.

218/ S C, 1st yr., 1st Series, No. 2, 45th mtg., p. 326.

219/ S C, 1st yr., 1st Series, No. 2, 46th mtg., pp. 344-348.

220/ Ibid., pp. 348 and 349.

221/ S C, 1st yr., 1st Series, No. 2, 47th mtg., p. 378.

222/ S C, 1st yr., 1st Series, No. 2, 47th mtg., p. 379.

223/ S C, 1st yr., 1st Series, No. 2, 45th mtg., pp. 331, 337 and 338; 47th mtg., pp. 367-369.

252. At the 48th meeting of the Council on 24 June 1946, the representative of Poland submitted a revised version 224/ of the draft resolution which he had presented at the 34th meeting of the Council and which had not been put to the vote (see paragraphs 233 and 238). The revision consisted in the deletion of the references to Articles 39 and 41 of the Charter. At its 48th meeting, the Council rejected 225/ that revised version by 7 votes to 4.

253. At its 79th meeting on 4 November 1946, the Council concluded the consideration of the Spanish question by resolving 226/ "that the situation in Spain is to be taken off the list of matters of which the Council is seized, and that all records and documents of the case be put at the disposal of the General Assembly". 227/

Case No. 15

The Greek question (I)

254. By a cablegram 228/ dated 24 August 1946, the Foreign Minister of the Ukrainian SSR, referring to Articles 34 and 35 (1) of the Charter, brought to the Security Council's attention "the situation in the Balkans which has resulted from the policy of the Greek Government".

255. During the discussion on the adoption of the agenda some representatives stated that the situation brought to the attention of the Council fell essentially within Greece's domestic jurisdiction and that the Security Council was debarred by Article 2 (7) from discussing it. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347 and 353).

256. Despite the objections raised on the grounds of Article 2 (7), the Council, at its 59th meeting on 3 September 1946, included 229/ the Ukrainian communication in its agenda by 7 votes to 2, with 2 abstentions.

257. At the 67th, 69th and 70th meetings of the Council, several draft resolutions were submitted on the substance of the question. None obtained the required majority. The explanations of vote indicated that the negative votes were not motivated by considerations based on Article 2 (7).

258. At its 70th meeting, the Council concluded its discussion of the item by removing 230/ it from the list of matters of which it was seized.

224/ S C, 1st yr., 1st Series, No. 2, 48th mtg., pp. 383 and 384.

225/ S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 388.

226/ S C, 1st yr., 2nd Series, No. 21, 79th mtg., p. 498.

227/ For the discussion of the Spanish question in the General Assembly, see Case No. 1, paras. 12 to 40.

228/ S C, 1st yr., 2nd Series, Suppl. No. 5, pp. 149-151, annex 8 (S/137).

229/ S C, 1st yr., 2nd Series, No. 7, 59th mtg., p. 197.

230/ S C, 1st yr., 2nd Series, No. 16, 70th mtg., pp. 417-422.

Case No. 16

The Greek question (II)

259. By a resolution adopted unanimously 231/ on 19 December 1946, the Security Council established under Article 34 of the Charter, "a Commission of Investigation to ascertain the facts relating to ... alleged border violations along the frontier between Greece on the one hand and Albania, Bulgaria and Yugoslavia on the other". The Commission was "composed of a representative of each of the members of the Security Council". The resolution instructed the Commission to "conduct its investigation in northern Greece and in such places in other parts of Greece, Albania, Bulgaria, and Yugoslavia as the Commission considers should be included in its investigation in order to elucidate the causes and nature of the above-mentioned border violations and disturbances". Finally, the resolution gave the Commission authority "to call upon the Governments, officials and nationals of those countries, as well as such other sources as the Commission deems necessary, for information relevant to its investigation".

260. The problem of domestic jurisdiction was discussed in connexion with the Security Council resolution of 10 February 1947, which gave further instructions to the Commission. It was also mentioned in the Commission's report to the Security Council. These two points are studied below.

a. RESOLUTION OF 10 FEBRUARY 1947

261. By a cablegram 232/ sent from Athens on 6 February 1947, the Commission of Investigation informed the Security Council that it had requested the Greek Government to postpone the execution of eleven persons sentenced to death by Greek tribunals for political offences. The Commission wished to know whether, in submitting that request to the Greek Government, it had acted within the terms of reference laid down in the Security Council resolution of 19 December 1946.

262. The representative of Greece, in a letter 233/ dated 7 February 1947, informed the Security Council that the Greek Government had "exceptionally consented ... that the executions be postponed for forty-eight hours". At the same time the Greek Government lodged "the most emphatic protest in regard to the interference of the Commission of Investigation in the domestic affairs of ... Greece", contrary to Article 2, paragraph 7 ... and the terms of reference of the Commission".

263. The Commission's cablegram and the letter of the representative of Greece were considered by the Council at its 100th and 101st meetings. The arguments submitted at those meetings in regard to the protest lodged by the Greek Government, which are set out in the Analytical Summary of Practice, related to the following question:

Whether a request for a stay of execution constitutes intervention (paragraph 367).

264. At its 101st meeting on 10 February 1947, the Security Council, by 9 votes to none, with 2 abstentions, adopted 234/ a resolution 235/ advising the Commission that:

231/ S C, 1st yr., 2nd Series, No. 28, 87th mtg., pp. 700 and 701.

232/ S C, 2nd yr., Suppl. No. 4, pp. 51 and 52, annex 9 (S/266).

233/ S C, 2nd yr., Suppl. No. 4, pp. 52-54, annex 10 (S/271).

234/ S C, 2nd yr., No. 10, 101st mtg., p. 188.

235/ S C, 2nd yr., No. 10, 100th mtg., p. 176.

"it is the sense of the Security Council that the Commission, acting under the resolution adopted by the Council on 19 December 1946, is not empowered to request the appropriate authorities of Greece, Albania, Bulgaria and Yugoslavia to postpone the execution of any persons sentenced to death, unless the Commission has reason to believe that the examination of any such person as a witness would assist the Commission in its work, and makes its request on this ground."

265. The resolution made no reference to Article 2 (7) or to any other provision of the Charter.

b. REPORT OF THE COMMISSION OF INVESTIGATION

266. The Commission established by the Security Council resolution of 19 December 1946 submitted its report on 27 May 1947. The report surveyed the evidence collected during the investigation and set forth the Commission's conclusions and proposals.

267. The conclusions were contained in two chapters of the report. The first chapter was approved 236/ by eight of the eleven members of the Commission. Section D of that chapter was entitled "Greek domestic policy in relation to the Commission's inquiry". It stated:

"The representatives of Albania, Bulgaria and Yugoslavia charged that the present régime was responsible for a state of civil war in Greece and for the disturbed conditions in the northern provinces. The Greek Government took the position 237/ that an investigation of that charge would involve the internal affairs of Greece which were not within the Commission's competence. Accordingly, the Greek Government did not on those grounds present evidence in refutation and in consequence the evidence before the Commission was inevitably one-sided. Nevertheless it was felt by the Commission that in so far as it might constitute a factor contributing to the disturbed conditions in northern Greece along the Greek frontier, the Greek internal situation could not be ignored ... In connection with the present situation in Greece ... evidence was presented not only by the representatives of Greece's three northern neighbours, but by three Communist-controlled groups: the EAM (National Liberation Front), the Central Committee of the General Confederation of Labour, and the EPON youth organization. In addition, the Commission heard representatives of the Left Liberal Party as well as a number of individual witnesses." 238/

268. The second chapter of the conclusions was approved 239/ by two members. These members had not subscribed to the conclusions contained in the first chapter. As regards the problem of domestic jurisdiction, the second chapter stated:

"The Commission ... was unable to agree with the Greek representative's assertion that questions concerning the internal situation in the country did not come under its terms of reference, as it considered that the tense situation and disorders in northern Greece were directly connected with the situation throughout the country." 240/

236/ S C, 2nd yr., Special Suppl. No. 2, vol. 1, p. 147.

237/ See para. 376 and footnote 335.

238/ S C, 2nd yr., Special Suppl. No. 2, vol. 1, pp. 112 and 113.

239/ S C, 2nd yr., Special Suppl. No. 2, vol. 1, p. 151.

240/ S C, 2nd yr., Special Suppl. No. 2, vol. 1, p. 140.

269. Before setting forth the Commission's proposals, the report stated:

"The Commission did not make any suggestions in matters which were essentially within the domestic jurisdiction of the countries concerned as they would be contrary to the provisions of paragraph 7 of Article 2 of the Charter. However, in the event that the Greek Government should decide to grant a new amnesty for political prisoners and guerrillas, the Commission suggested that the Security Council make known to the Greek Government its willingness, if that Government so requested it, to lend its good offices in order to secure by all possible means the realization of that measure." 241/

270. The report then formulated the Commission's proposals, which had been approved by nine of its members. The proposals stated:

"B. In order to provide effective machinery for the regulation and control of their common frontiers, the Commission proposed that the Security Council recommend to the Governments concerned that they enter into new conventions ...

"C. ... The Commission recommended the establishment of a body with the following composition and functions:

"(a) The body should be established by the Security Council in the form of either a small commission or a single commissioner.

".

"(c) The commission or commissioner should have the right to perform its functions on both sides of the border ... The functions and duties of the commission or commissioner should be:

"(i) To investigate any frontier violations that should occur;

"(ii) To use its good offices for the settlement, through the means mentioned in Article 33 of the Charter, of /disputes/ ..."

"D. The Commission recognized that owing to the deep-rooted causes of the present disturbances and to the nature of the frontiers, it was physically impossible to control the passage of refugees across the border. As the presence of those refugees in any of the four countries was a disturbing factor, each Government should assume the obligation to remove them as far away as possible from the area from which they came as it was physically and practically possible.

".

"E. The Commission proposed that the Security Council recommend to the Governments concerned that they study the practicability of concluding agreements for the voluntary transfer of minorities." 242/

241/ S C, 2nd yr., Special Suppl. No. 2, vol. 1, p. 153.

242/ S C, 2nd yr., Special Suppl. No. 2, vol. 1, pp. 154-156.

271. The Commission's report was considered by the Security Council at its 147th to 171st meetings inclusive. None of the draft resolutions submitted in connexion with the report obtained the necessary majority. The problem of domestic jurisdiction was not discussed during the debates on those draft resolutions. 243/

272. At its 202nd meeting the Council removed the Greek question from the list of matters of which it was seized. 244/

Case No. 17

The Indonesian question

273. By letters 245/ dated 30 July 1947, Australia and India brought to the Security Council's attention the situation created by the hostilities then in progress between the armed forces of the Netherlands and those of the Republic of Indonesia. Australia invoked Article 39, India, Article 35, of the Charter.

274. The item was included in the provisional agenda of the 171st meeting of the Council. At that meeting, the President stated: 246/

"I should like to make it clear that the adoption of this item on the agenda does not in any way prejudice either the competence of the Security Council in the matter or any of the merits of the case."

275. The President's statement was not challenged and the provisional agenda was adopted 247/ without objection.

a. RESOLUTION OF 1 AUGUST 1947

i. Draft resolution submitted by Australia

276. At the 171st meeting of the Security Council, the representative of Australia submitted a draft resolution 248/ under which the Council, having determined that the hostilities in Indonesia constituted a breach of the peace under Article 39 of the Charter, would have called upon the Governments of the Netherlands and of the Republic of Indonesia, under Article 40 of the Charter, to cease hostilities and to settle their disputes by arbitration.

277. The representative of the Netherlands, who, after the adoption of the agenda, had been invited to participate in the debate, opposed the draft resolution submitted by the representative of Australia. He held that there was no threat to the peace,

243/ One of those draft resolutions was based on the Commission's proposals (S C, 2nd yr., No. 51, 147th mtg., S/391, pp. 1124-1126). It was opposed by representatives who contended that its "adoption ... would constitute a flagrant infringement of the provisions of the Charter which protect the sovereign rights of States" (S C, 2nd yr., No. 59, 160th mtg., p. 1379. See also *ibid.*, No. 57, 156th mtg., pp. 1280 and 1281; No. 63, 166th mtg., pp. 1520 and 1521, 1525; No. 66, 169th mtg., pp. 1598 and 1599). During the consideration of the contention a passing reference was made to Article 2 (7). (S C, 2nd yr., No. 63, 166th mtg., p. 1520) That did not, however, lead to a discussion of that provision.

244/ S C, 2nd yr., No. 89, 202nd mtg., p. 2405.

245/ S C, 2nd yr., Suppl. No. 16, S/447 and S/449, pp. 149 and 150.

246/ S C, 2nd yr., No. 67, 171st mtg., p. 1617.

247/ S C, 2nd yr., No. 67, 171st mtg., p. 1617.

248/ S C, 2nd yr., No. 67, 171st mtg., p. 1626.

breach of the peace or act of aggression; the provisions of Chapter VII of the Charter, and, in particular, Articles 39 and 40, were therefore not applicable. Moreover, he expressed the view that the Republic of Indonesia was not a sovereign State but a "constituent element" of the Netherlands, and that the item under consideration therefore, fell essentially within the domestic jurisdiction of the Netherlands. Since, as he had already stated, the situation did not come under Chapter VII, the last phrase of Article 2 (7) was not applicable and the Security Council was debarred from dealing with the item. ^{249/} The contention of the representative of the Netherlands was supported by some Member States and disputed by others. The arguments for and against that contention, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether resolutions by which the Security Council tenders its good offices to the parties to a dispute or calls upon them to cease hostilities and to settle the dispute by peaceful means constitute intervention (paragraphs 380, 382 and 383);

The meaning of the last phrase of Article 2 (7) (paragraphs 445-448);

Whether the International Court of Justice should be requested to give an advisory opinion on the question of domestic jurisdiction (paragraphs 467 and 470).

ii. Amendment submitted by the United States

278. At the 172nd meeting of the Council, the representative of the United States submitted an amendment ^{250/} deleting all references to the provisions of the Charter from the draft resolution submitted by Australia. The amendment read:

"The Security Council,

"Noting with concern the hostilities in progress between the armed forces of the Netherlands and of the Republic of Indonesia;

"Calls upon the parties,

"(a) To cease hostilities forthwith, and

"(b) To settle their disputes by arbitration or by other peaceful means."

279. The representative of the United States contended that the above text would enable the Council to "^{stop} the fighting ... without prejudice to the position which any member of ^{the} Council may feel that he must take on the important juridical principles involved". ^{251/}

iii. Decision concerning competence

280. At the 173rd meeting of the Council on 1 August 1947, the representative of the United States, accepting an amendment submitted by the representative of France, added to the preamble of his amendment a second phrase ^{252/} which read:

"... and without in any way deciding the juridical question concerning the competence of the Security Council in this regard".

^{249/} S C, 2nd yr., No. 67, 171st mtg., pp. 1619, 1620, 1645 and 1646; No. 74, 181st mtg., pp. 1920-1923; No. 77, 185th mtg., p. 2011.

^{250/} S C, 2nd yr., No. 68, 172nd mtg., p. 1658.

^{251/} S C, 2nd yr., No. 68, 172nd mtg., p. 1658.

^{252/} S C, 2nd yr., No. 68, 173rd mtg., p. 1687.

281. At the same meeting the amendment submitted by the United States was put to the vote, in parts. The phrase quoted above failed to obtain the necessary majority 253, and was therefore rejected. There were 5 votes in favour and 6 abstentions.

iv. Voting on resolution of 1 August 1947

282. The Council adopted 254/ the first phrase of the preamble to the United States amendment submitted by the United States by 7 votes to none, with 4 abstentions. The operative part with an amendment submitted by Poland requesting the parties to "keep the Security Council informed about the progress of the settlement" was adopted 255, by 8 votes in favour, with 5 abstentions.

283. Finally, the Council rejected 256/ an amendment submitted by the USSR which read:

"The Security Council considers it necessary that the armed forces of both sides, the Netherlands and the Indonesian Republic, should be immediately withdrawn to the previous positions which they occupied before the beginning of the military operations."

284. As adopted by the Council, the text of the amendment submitted by the United States read:

"The Security Council,

"Noting with concern the hostilities in progress between the armed forces of the Netherlands and the Republic of Indonesia,

"Calls upon the parties,

"(a) To cease hostilities forthwith, and

"(b) To settle their disputes by arbitration or by other peaceful means and keep the Security Council informed of the progress of the settlement."

285. Since the above-quoted text replaced the draft resolution submitted by Australia, the latter was not put to the vote.

v. Letter dated 3 August 1947 addressed by the representative of the Netherlands to the President of the Security Council

286. By a letter 257/ dated 3 August 1947, the representative of the Netherlands informed the President of the Security Council that "... although persisting in its denial of the Council's jurisdiction in this matter /the Netherlands Government/ ... has instructed the Lieutenant-Governor-General of the Netherlands Indies to enter into contact with the authorities of the Republic /of Indonesia/ in order to arrive at the cessation, on both sides, of hostile action of any kind".

253/ S C, 2nd yr., No. 68, 173rd mtg., p. 1702.

254/ S C, 2nd yr., No. 68, 173rd mtg., p. 1700.

255/ S C, 2nd yr., No. 68, 173rd mtg., pp. 1702 and 1703.

256/ The amendment failed to obtain the necessary majority. There were 2 votes in favour and 9 abstentions (S C, 2nd yr., No. 68, 173rd mtg., p. 1710).

257/ S C, 2nd yr., No. 69, 174th mtg., S/466, p. 1716.

b. RESOLUTIONS OF 25 AND 26 AUGUST 1947

i. Decisions concerning competence

287. At the 194th meeting of the Council on 25 August 1947, the representative of Belgium submitted a draft resolution 258/ recalling that "in invoking Article II, paragraph 7 ... the Government of the Netherlands contests the competence of the Security Council to deal with the /Indonesian/ question" and requesting the International Court of Justice to give "an advisory opinion on whether the Security Council is competent to deal with the aforementioned question".

288. The representative of Belgium observed that the question of competence was a previous question. He therefore moved 259/ that his draft resolution be put to the vote before two other draft resolutions - the first submitted jointly by Australia and China at the 193rd meeting of the Council and the second submitted by the United States at the same meeting. At its 194th meeting, the Council rejected 260/ the motion submitted by Belgium and proceeded to vote on and to adopt the two other draft resolutions. Those draft resolutions are considered below in paragraphs 291 to 296.

289. The draft resolution submitted by the representative of Belgium was put to the vote at the 195th meeting of the Council on 26 August 1947. It failed 261/ to obtain the necessary majority and was therefore rejected. There were 4 votes in favour, one against and 6 abstentions.

ii. Amendment submitted by the Union of Soviet Socialist Republics

290. At its 194th meeting, the Council voted on a USSR amendment 262/ providing that a Commission be established "to supervise the implementation of the decision of the Security Council of 1 August". There were 7 votes in favour, 2 against and 2 abstentions. 263/ Since one of the negative votes was cast by France - a permanent member of the Security Council - the proposal was not adopted. The representative of France, in explaining his vote, stated that his "delegation ... went as far as it could in accepting the measures proposed, as long as those measures, either by their substance or by the way in which they were presented, did not involve the question of competence". 264/

iii. First resolution of 25 August 1947

291. After the rejection of the amendment submitted by the USSR, the Security Council, at its 194th meeting on 25 August 1947, adopted 265/ the draft resolution which had been submitted jointly by Australia and China at the 193rd meeting (see paragraph 288).

258/ S C, 2nd yr., No. 83, 194th mtg., S/517, in footnote 1 to p. 2193.

259/ S C, 2nd yr., No. 83, 194th mtg., p. 2193.

260/ There were 2 votes in favour, none against and 9 abstentions. (S C, 2nd yr., No. 83, 194th mtg., p. 2196)

261/ S C, 2nd yr., No. 84, 195th mtg., p. 2224.

262/ S C, 2nd yr., No. 83, 194th mtg., p. 2197. The text was submitted in the form of an amendment to the draft resolution submitted by Australia and China (see para. 291).

263/ S C, 2nd yr., No. 83, 194th mtg., pp. 2199 and 2200.

264/ S C, 2nd yr., No. 84, 195th mtg., p. 2214.

265/ There were 7 votes in favour, none against, and 4 abstentions (S C, 2nd yr., No. 83, 194th mtg., p. 2200).

292. The preamble to the resolution noted "with satisfaction" the steps taken by the parties to comply with the resolution of 1 August 1947 and the "statement issued by the Netherlands Government on 11 August, in which it affirms its intention to organize a sovereign, democratic United States of Indonesia in accordance with the purposes of the Linggadjati Agreement". 266/ The preamble also noted that the Netherlands Government had expressed the intention to request the career consuls stationed in Batavia jointly to report on the present situation in the Republic of Indonesia. 267/

293. The operative part of the resolution read:

"The Security Council

"Requests the Governments members of the Council which have career consular representatives in Batavia to instruct them to prepare jointly for the information and guidance of the Security Council reports on the situation in the Republic of Indonesia following the resolution of the Council on 1 August 1947, such reports to cover the observance of the cease-fire orders and the conditions prevailing in areas under military occupation or from which armed forces now in occupation may be withdrawn by agreement between the parties;

"Requests the Governments of the Netherlands and of the Republic of Indonesia to grant to the representatives referred to ... /above/ all facilities necessary for the effective fulfilment of their mission".

294. In subsequent resolutions 268/ the Council used the term "Consular Commission" in referring to the group of career consular representatives mentioned in the above resolution.

iv. Second resolution of 25 August 1947

295. Also at the 194th meeting the Council, by 8 votes to none with 3 abstentions, adopted 269/ the following draft resolution which had been submitted by the United States at the 193rd meeting (see paragraph 288).

266/ The Linggadjati Agreement was concluded on 25 March 1947 between the Netherlands and the Republic of Indonesia. For the text of the agreement, see: Netherlands Information Bureau, The political events in the Republic of Indonesia, New York, 1947, pp. 34-37.

267/ At the 185th meeting, the representative of the Netherlands had stated:

"My Government /proposes/ that all the career consuls stationed in Batavia should ... draw up a report on the present situation on the islands of Java, Sumatra and Madura ... we would wish to proceed with an investigation, but not with an investigation ordered by the Security Council, the Council having no jurisdiction. We are all for a commission or an investigation, but we hold that the Security Council has not the right to establish one."

(S C, 2nd yr., No. 77, 185th mtg., pp. 2013 and 2014)

268/ S C resolutions of 1 November 1947 and 28 January 1949.

269/ S C, 2nd yr., No. 83, 194th mtg., p. 2209.

"The Security Council

"

"Resolves to tender its good offices to the parties in order to assist in the pacific settlement of their dispute, in accordance with paragraph (b) of the resolution of the Council of 1 August 1947. The Council expresses its readiness, if the parties so request, to assist in the settlement through a committee of the Council consisting of three members of the Council, each party selecting one, and the third to be designated by the two so selected."

296. In subsequent resolutions 270/ the Council used the term "Committee of Good Offices" to refer to the committee mentioned in the above resolution. On 28 January 1949 the Council decided that "the Committee of Good Offices shall henceforth be known as the United Nations Commission for Indonesia".

v. Resolution of 26 August 1947

297. At its 195th meeting on 26 August 1947, the Council, by 10 votes to none, with 1 abstention, adopted 271/ a resolution calling upon the parties "to adhere strictly to the recommendation of the Security Council of 1 August 1947".

298. None of the resolutions adopted on 25 and 26 August 1947 refer to any provision of the Charter. Neither do they make any mention of the objections raised by the Netherlands on the grounds of Article 2 (7). (See paragraph 277).

C. LETTERS DATED 30 AUGUST AND 4 SEPTEMBER 1947 ADDRESSED TO THE
SECRETARY-GENERAL BY THE REPRESENTATIVE OF THE NETHERLANDS

299. By a letter 272/ dated 30 August 1947, the representative of the Netherlands informed the Secretary-General that:

"the Netherlands Government, while maintaining undiminished its point of view regarding the incompetence of the Security Council in the matter, is nevertheless of the opinion that the tendency of the resolutions passed by the Security Council on 25 and 26 August 1947 concerning the Indonesian question is acceptable. The Netherlands Indies Government will provide the career consular officials in Batavia of the Powers concerned with all facilities necessary to carry out their task."

300. On 4 September 1947, the Netherlands Government informed 273/ the Secretary-General that it had selected Belgium to serve on the tri-partite Committee of Good Offices. On 18 September, the two other members of the Committee were appointed. 274/

270/ Resolutions of 1 November 1947, 28 February 1948, 29 July 1948, and 24 December 1948.

271/ S C, 2nd yr., No. 84, 195th mtg., p. 2232.

272/ S C, 2nd yr., No. 92, 206th mtg., S/537, p. 2481.

273/ S C, 2nd yr., No. 92, 206th mtg., S/545, p. 2481.

274/ The Republic of Indonesia appointed Australia; Australia and Belgium in turn chose the United States as third member (S C, 2nd yr., No. 92, 206th mtg., S/564 and S/558, p. 2481).

d. RESOLUTIONS OF 24 AND 28 DECEMBER 1948 AND 28 JANUARY 1949

301. Under the auspices of the Committee of Good Offices, the parties negotiated and concluded several agreements. During the negotiations the Security Council adopted several resolutions on the Indonesian question. Three of those resolutions gave rise to a discussion of the problem of domestic jurisdiction. All three had been opposed 275/ by the Netherlands representative on the grounds of Article 2 (7). The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether resolutions by which the Security Council tenders its good offices to the parties to a dispute or calls upon them to cease hostilities and to settle the dispute by peaceful means constitute intervention (paragraph 383);

The meaning of the last phrase of Article 2 (7) (paragraphs 446-448).

i. Resolution of 24 December 1948

302. The first of the above-mentioned three resolutions was adopted 276/ by 7 votes to none, with 4 abstentions, at the 392nd meeting of the Council on 24 December 1948. The preamble to the resolution noted the resumption of hostilities in Indonesia. The operative part called upon the parties

"(a) To cease hostilities forthwith, and

"(b) Immediately to release the President /of the Republic of Indonesia/ and /the/ other political prisoners arrested since 18 December".

ii. Resolution of 28 December 1948

303. The second resolution was adopted 277/ by 8 votes to none, with 3 abstentions, at the 395th meeting of the Council on 28 December 1948. It called upon "the Netherlands Government to set free ... /the above-mentioned/ political prisoners forthwith and report to the Security Council within twenty-four hours of the adoption of the present resolution".

304. Neither of these resolutions referred to any provision of the Charter or made any mention of the objections of the representative of the Netherlands on the grounds of Article 2 (7).

iii. Resolution of 28 January 1949

305. The third resolution was adopted 278/ at the 406th meeting of the Council on 28 January 1949.

275/ S C, 3rd yr., No. 132, 388th mtg., pp. 25 and 26; 4th yr., No. 9, 406th mtg., pp. 9-11.

276/ S C, 3rd yr., No. 134, 392nd mtg., p. 38.

277/ S C, 3rd yr., No. 136, 395th mtg., p. 67.

278/ S C, 4th yr., No. 9, 406th mtg., pp. 21-33. The resolution was adopted by a vote in parts.

The preamble to the resolution stated that:

"The Security Council

".

"Considering that continued occupation of the territory of the Republic of Indonesia by the armed forces of the Netherlands is incompatible with the restoration of good relations between the parties and with the final achievement of a just and lasting settlement of the Indonesian dispute;

"Considering that the establishment and maintenance of law and order throughout Indonesia is a necessary condition to the achievement of the expressed objectives and desires of both parties;

"Noting with satisfaction that the parties continue to adhere to the principles of the Renville Agreement ^{279/} and agree that free and democratic elections should be held throughout Indonesia for the purpose of establishing a constituent assembly at the earliest practicable date, and further agree that the Security Council should arrange for the observation of such elections by an appropriate agency of the United Nations; and that the representative of the Netherlands has expressed his Government's desire to have such elections held not later than 1 October 1949;

"Noting also with satisfaction that the Government of the Netherlands plans to transfer sovereignty to the United States of Indonesia by 1 January 1950, if possible, and, in any case, during the year 1950;

"Conscious of its primary responsibility for the maintenance of international peace and security ^{280/} Article 24 (1), and in order that the rights, claims and position of the parties may not be prejudiced by the use of force;"

306. The operative part of the resolution again called upon the Netherlands to release all political prisoners arrested since 17 December 1948. It recommended that negotiations be undertaken by the parties on the basis of the Linggadjati and Renville Agreements for the purpose of establishing an interim federal government, holding elections to choose representatives to an Indonesian constituent assembly and, finally, transferring to the United States of Indonesia the sovereignty over its territory. To ensure the implementation of these recommendations the resolution gave detailed instructions to the Consular Commission and to the United Nations Commission for Indonesia.

307. On 16 January 1950, the United Nations Commission for Indonesia informed ^{280/} the Security Council that the Netherlands had transferred to the United States of Indonesia the sovereignty over Indonesia.

308. On 28 September 1950, Indonesia was admitted ^{281/} to membership in the United Nations.

^{279/} The Renville Agreement had been concluded between the Netherlands and the Republic of Indonesia under the auspices of the Committee of Good Offices. For the text of the Agreement, see S C, 3rd yr., Special Suppl. No. 1, appendices VIII, XI, XII, XIII.

^{280/} S C, 5th yr., Special Suppl. No. 1, pp. 16-19.

^{281/} G A resolution 491 (V).

Case No. 18

The Czechoslovak question

309. By a letter 282/ dated 12 March 1948, the representative of Chile, acting under Article 35 (1) of the Charter, brought to the attention of the Security Council the situation then existing in Czechoslovakia. At the same time, he referred 283/ to the Council a communication from the former permanent representative of Czechoslovakia to the United Nations, alleging that the USSR had intervened in Czechoslovakia's internal affairs, and, by the threat of the use of force, had imposed a new political régime on that State, in violation of Article 2 (4) of the Charter and the provisions of international agreements to which the USSR was a party.

310. During the discussion on the adoption of the agenda, some representatives, contending that the question fell essentially within Czechoslovakia's domestic jurisdiction, opposed the inclusion of the item in the agenda on the grounds of Article 2 (7). The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347, 352 and 353).

311. Despite the objections raised on the grounds of Article 2 (7), the Security Council, at its 268th meeting on 17 March 1948, included 284/ the question in the agenda by 9 votes to 2.

312. At its 278th meeting, the Council invited 285/ Czechoslovakia "to participate without vote in the discussion of the ... question". By a letter 286/ dated 8 April 1948, the representative of Czechoslovakia informed the Council that "since the discussion of internal matters of Czechoslovakia in the Security Council is contrary to the basic principles of the Charter ... the Czechoslovak Government does not find it possible to take in any way part in such discussion".

313. At the 281st meeting of the Council, the representative of Chile submitted a draft resolution 287/ which stated:

"Whereas the attention of the Security Council has been drawn by a Member of the United Nations, in accordance with Articles 34 and 35 of the Charter, to the situation in Czechoslovakia which may endanger international peace and security; and the Security Council has been asked to investigate this situation;

".

"... without prejudice of any decisions which may be taken in accordance with Article 34 of the Charter,

282/ S C, 3rd yr., Suppl. for Jan., Feb. and March, S/694, pp. 31-34.
283/ S C, 3rd yr., Suppl. for Jan., Feb. and March, S/696, pp. 34-37.
284/ S C, 3rd yr., Nos. 36-51, 268th mtg., pp. 101 and 102.
285/ S C, 3rd yr., No. 53, 278th mtg., p. 6.
286/ S C, 3rd yr., Suppl. for April, S/718, p. 6.
287/ S C, 3rd yr., No. 73, 303rd mtg., p. 28.

"The Security Council"

"Resolves to appoint a sub-committee of three members and instructs this sub-committee to receive or to hear ... evidence, statements and testimonies and to report to the Security Council at the earliest possible time."

314. The draft resolution was opposed by the representative of the USSR on the grounds that the appointment of the proposed sub-committee would constitute intervention in the internal affairs of Czechoslovakia. 288/ Other representatives, however, contended that the situation in Czechoslovakia did not fall essentially within domestic jurisdiction and that the Council, therefore, was not debarred by Article 2 (7) from adopting the Chilean draft resolution. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international law can fall essentially within domestic jurisdiction (paragraph 393);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraph 399).

315. The draft resolution submitted by the representative of Chile was put to the vote at the 303rd meeting of the Security Council. There were 9 votes in favour and 2 against. Since one of the negative votes was cast by the USSR - a permanent member of the Council - the resolution was not adopted. 289/

316. The Council took no further action on the Czechoslovak question.

*Case No. 19**The Greek question (III)*

317. At the 493rd meeting of the Security Council on 31 August 1950, the representative of the USSR proposed 290/ that the following item be included in the agenda: "The unceasing terrorism and mass executions in Greece".

318. The inclusion of the item was opposed, *inter alia*, on the grounds that the matter fell essentially within Greece's domestic jurisdiction. 291/

319. At its 493rd meeting the Council, by 9 votes to 2, decided 292/ not to include the item in its agenda.

*Case No. 20**The Anglo-Iranian Oil Company question*

320. In 1951 the Iranian Parliament passed two laws nationalizing the oil industry in Iran. As a consequence of these laws, a dispute arose between the Government of Iran

288/ S C, 3rd yr., No. 56, 281st mtg., p. 14.

289/ S C, 3rd yr., No. 73, 303rd mtg., p. 29.

290/ S C, 5th yr., No. 35, 493rd mtg., pp. 1 and 2.

291/ Ibid., pp. 22 and 23.

292/ Ibid., p. 30.

and the Anglo-Iranian Oil Company. At the request of the United Kingdom, which had adopted the cause of the British company, the International Court of Justice, by an order dated 5 July 1951, indicated certain interim measures of protection. The order stated that the indication of such measures "in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case". (See paragraph 337.)

321. By a letter 293/ dated 28 September 1951, the representative of the United Kingdom requested the Security Council to include in its agenda the following item: "Complaint of failure by the Iranian Government to comply with provisional measures indicated by the International Court of Justice in the Anglo-Iranian Oil Company case". He contended that the nationalization of the Anglo-Iranian Oil Company was contrary both to the rules of international law governing the expropriation of foreign property and to the provisions of the treaties concluded between the United Kingdom and Iran. 294/ He also held that the order indicating interim measures had given rise to obligations which it was the right and duty of the Security Council to uphold. 295/ Finally he expressed his Government's concern "at the dangers inherent in the situation caused by the failure of the Iranian Government to comply with the provisional measures" and at the threat to the peace and security that may thereby be involved". 296/

322. During the discussion on the adoption of the agenda, some representatives opposed the inclusion in the agenda of the item proposed by the United Kingdom on the grounds that the nationalization of the oil industry of Iran fell essentially within Iran's domestic jurisdiction. 297/ The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following question:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347, 352 and 353).

Despite the objections raised on the grounds of Article 2 (7), the Security Council, at its 559th meeting, included 298/ the item in the agenda by 9 votes to 2.

323. At the 560th meeting of the Council, the representative of Iran contended 299/ that since the matter fell essentially within Iran's domestic jurisdiction, the Council had no competence to deal with it. His contention was disputed by other representatives. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether a matter governed by international law can fall essentially within domestic jurisdiction (paragraph 394);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraph 399);

Whether the Security Council should adjourn the debate on a matter until the International Court of Justice has ruled on its own competence to deal with a related matter (paragraph 460).

293/ S C, 6th yr., Suppl. for Oct., Nov. and Dec., S/2357, pp. 1 and 2.

294/ S C, 6th yr., 561st mtg., para. 40.

295/ S C, 6th yr., 559th mtg., para. 18.

296/ S C, 6th yr., Suppl. for Oct., Nov. and Dec., S/2357, para. 3.

297/ S C, 6th yr., 559th mtg., paras. 3 and 4, 9.

298/ Ibid., para. 54.

299/ S C, 6th yr., 560th mtg., paras. 28 and 37.

324. At the 562nd meeting of the Council, the representative of the United Kingdom submitted a draft resolution 300/ based on Article 35 of the Charter and calling for the resumption of negotiations between the parties.

325. At the same meeting the representative of Ecuador submitted a draft resolution 301/ whose preamble noted that:

"... the International Court of Justice is to express its opinion on the question whether the dispute falls exclusively within the domestic jurisdiction of Iran".

The operative part read:

"The Security Council,

"Without deciding on the question of its own competence,

"Advises the parties concerned to reopen negotiations as soon as possible with a view to making a fresh attempt to settle their differences in accordance with the Purposes and Principles of the United Nations Charter."

326. At the 565th meeting of the Council on 19 October 1951, the representative of France moved 302/ that the Council adjourn the debate "until the International Court of Justice had ruled on its own competence in the matter". The motion was adopted 303/ at the same meeting by 8 votes to 1, with 2 abstentions.

327. On 22 July 1952, the International Court of Justice ruled, on grounds not related to Article 2 (7), that it had "no jurisdiction to deal with" the Anglo-Iranian Oil Company case. On the same date the order of 5 July 1951 became inoperative and the provisional measures indicated therein lapsed. (See paragraph 338.)

Case No. 21

The question of Morocco

328. By a letter 304/ dated 21 August 1953, the representatives of fifteen Member States, acting under Article 35 (1) of the Charter, brought to the attention of the Security Council the situation created "by the unlawful intervention of France in Morocco and the overthrow of its legitimate sovereign".

329. During the discussion on the adoption of the agenda the representative of France opposed the inclusion of the item in the agenda on the grounds of Article 2 (7). He contended 305/ that, although Morocco had remained legally a sovereign State, it had transferred to France the exercise of its external sovereignty by the Treaty of Fez of 30 March 1912. Hence, the matters governed by that Treaty - and in particular the situation brought to the Council's attention - fell essentially within France's domestic jurisdiction. Moreover, the situation fell within Morocco's domestic

300/ S C, 6th yr., Suppl. for Oct., Nov. and Dec., pp. 4 and 5, S/2358/Rev.2.
301/ S C, 6th yr., 562nd mtg., S/2320, para. 48.
302/ S C, 6th yr., 565th mtg., paras. 9 and 10, 12.
303/ S C, 6th yr., 565th mtg., para. 62.
304/ S C, 8th yr., Suppl. for July, Aug. and Sept., p. 51, S/3085.
305/ S C, 8th yr., 619th mtg., paras. 22-28.

jurisdiction as well. Its discussion by the Council would therefore constitute a twofold violation of Article 2 (7).

330. The contention of the representative of France was supported 306/ by some members and disputed by others. The arguments for and against, which are set out in the Analytical Summary of Practice, related to the following questions:

Whether the inclusion of an item in the agenda constitutes intervention (paragraphs 347, 349, 352 and 353);

Whether a matter governed by international agreements can fall essentially within domestic jurisdiction (paragraphs 399 and 401).

331. There were also representatives who opposed 307/ the inclusion of the item in the agenda for reasons not based on Article 2 (7).

332. At its 624th meeting, the Council decided, 308/ by 5 votes to 5, with 1 abstention, not to include the item in its agenda.

D. International Court of Justice

333. This section deals with two cases, numbered 22 and 23, which were considered by the International Court of Justice in 1950 and 1951.

Case No. 22

Interpretation of peace treaties with Bulgaria, Hungary and Romania

334. It will be recalled (see paragraph 126) that by resolution 294 (IV) the General Assembly requested the International Court of Justice to give an advisory opinion on the interpretation of the provisions for the settlement of disputes contained in the peace treaties with Bulgaria, Hungary and Romania.

335. In communications addressed to the Court, the three States contended that the request for an advisory opinion constituted intervention in matters essentially within their domestic jurisdiction. The advisory opinion of 30 March 1950, delivered by the Court in pursuance of resolution 294 (IV), deals with that contention in the following terms:

"The power of the Court to exercise its advisory function in the present case has been contested by the Governments of Bulgaria, Hungary and Romania, and also by several other Governments, in the communications which they have addressed to the Court.

"This objection is founded mainly on two arguments.

"It is contended that the Request for an Opinion was an action *ultra vires* on the part of the General Assembly because, in dealing with the question of the observance of human rights and fundamental freedoms in the three States mentioned above, it was 'interfering' or 'intervening' in matters essentially within the domestic jurisdiction of States. This contention against the exercise by the Court of its advisory function seems thus to be based on the

306/ S C, 8th yr., 620th mtg., paras. 17-23; 623rd mtg., para. 29.

307/ S C, 8th yr., 620th mtg., para. 12; 624th mtg., paras. 47 and 48.

308/ S C, 8th yr., 624th mtg., para. 45.

alleged incompetence of the General Assembly itself, an incompetence deduced from Article 2, paragraph 7, of the Charter.

"The terms of the General Assembly's Resolution [29⁴ (IV)] ... considered as a whole and in its separate parts, show that this argument is based on a misunderstanding. When the vote was taken on this Resolution, the General Assembly was faced with a situation arising out of the charges made by certain Allied and Associated Powers, against the Governments of Bulgaria, Hungary and Romania of having violated the provisions of the Peace Treaties concerning the observance of human rights and fundamental freedoms. For the purposes of the present Opinion, it suffices to note that the General Assembly justified the adoption of its Resolution by stating that 'the United Nations, pursuant to Article 55 of the Charter, shall promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion' [see paragraph 107].

"The Court is not called upon to deal with the charges brought before the General Assembly since the Questions put to the Court relate neither to the alleged violations of the provisions of the Treaties concerning human rights and fundamental freedoms nor to the interpretation of the articles relating to these matters. The object of the Request is much more limited. It is directed solely to obtaining from the Court certain clarifications of a legal nature regarding the applicability of the procedure for the settlement of disputes by the Commissions provided for in the express terms of Article 36 of the Treaty with Bulgaria, Article 40 of the Treaty with Hungary and Article 38 of the Treaty with Romania. The interpretation of the terms of a treaty for this purpose could not be considered as a question essentially within the domestic jurisdiction of a State. It is a question of international law which, by its very nature, lies within the competence of the Court.

"These considerations also suffice to dispose of the objection based on the principle of domestic jurisdiction and directed specifically against the competence of the Court, namely, that the Court, as an organ of the United Nations, is bound to observe the provisions of the Charter, including Article 2, paragraph 7." 309/

Case No. 23

The Anglo-Iranian Oil Company case

336. It will be recalled (see above, paragraph 320) that, by an order dated 5 July 1951, the International Court of Justice indicated certain interim measures of protection which had been requested by the United Kingdom in the Anglo-Iranian Oil Company case.

337. The order referred to the problem of domestic jurisdiction in the following terms:

309/ Interpretation of Peace Treaties, I C J, Reports 1950, pp. 70 and 71.
c.f. Dissenting opinion by Judge Krylov, *ibid.*, pp. 111-113.

"Whereas in its message of June 29th, 1951, the Iranian Government stated that it rejected the Request for the indication of interim measures of protection presented by the United Kingdom Government on the grounds principally of the want of competence on the part of the United Kingdom Government to refer to the Court a dispute which had arisen between the Iranian Government and the Anglo-Iranian Oil Company, Limited, and of the fact that this dispute pertaining to the exercise of the sovereign rights of Iran was exclusively 310/7 within the national jurisdiction of that State and thus not subject to the methods of settlement specified in the Charter;

"Whereas it appears from the Application by which the Government of the United Kingdom instituted proceedings, that that Government has adopted the cause of a British company and is proceeding in virtue of the right of diplomatic protection;

"Whereas the complaint made in the Application is one of an alleged violation of international law by the breach of the agreement for a concession of April 29th, 1953, and by a denial of justice which, according to the Government of the United Kingdom, would follow from the refusal of the Iranian Government to accept arbitration in accordance with that agreement, and whereas it cannot be accepted *a priori* that a claim based on such a complaint falls completely outside the scope of international jurisdiction;

"Whereas the considerations stated in the preceding paragraph suffice to empower the Court to entertain the Request for interim measures of protection;

"Whereas the indication of such measures in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction." 311/

338. On 22 July 1952 the Court delivered a judgment finding that it "had no jurisdiction to deal with the Anglo-Iranian Oil Company case" 312/ and cancelling the interim measures indicated in the Order of 5 July 1951. The judgment was based on grounds not related to the problem of domestic jurisdiction.

310/ In the course of the hearings which preceded the judgment of 22 July 1952 (see paragraph 338), Iran submitted:

"That the United Kingdom and Iran, having in their Declarations reserved questions which, according to international law, are within the exclusive jurisdiction of States, this reservation, having regard to the substitution of Article 2, paragraph 7, of the Charter of the United Nations for Article 15, paragraph 8, of the Covenant of the League of Nations, must be understood as extending to questions which are essentially within the domestic jurisdiction of States;

"That express declarations of this kind undoubtedly reinforce the general provision in Article 2, paragraph 7, of the Charter of the United Nations, and therefore constitute an additional reason for the Court to declare that it lacks jurisdiction".

Anglo-Iranian Oil Co. case (jurisdiction), I C J Reports 1952, p. 99.

311/ Anglo-Iranian Oil Co. case, I C J Reports 1951, pp. 92 and 93.

312/ Anglo-Iranian Oil Co. case (jurisdiction), I C J Reports 1952, p. 114.

II. ANALYTICAL SUMMARY OF PRACTICE

339. The organization of the Analytical Summary of Practice and its relation to the General Survey are described above in the Introductory Note (see paragraphs 4-9). Cases dealt with in this Summary are mentioned not by title but by reference number. A table attached at the end of the present study indicates the organ concerned with the case, the title of the case corresponding to each reference number and the paragraphs of the General Survey and of the Analytical Summary of Practice in which the case is dealt with.

A. The term "to intervene" appearing in Article 2 (7)

340. The meaning of the term "to intervene" has frequently been discussed in United Nations organs. Some representatives have suggested general definitions of that term. Others, while not expressing a general view, have commented on whether certain specific types of action constituted intervention.

341. As regards the problem of a general definition, two main theses were advanced.

342. Some representatives held that "intervention" was a technical term traditionally defined in international law as "dictatorial interference", and that that definition was applicable to Article 2 (7). ^{313/} The conclusions drawn by these representatives are indicated in paragraphs 351, 359 and 372.

343. Other representatives, on the contrary, pointed out that the Security Council alone was empowered by the Charter to "interfere dictatorially". The other United Nations organs could only recommend. Moreover, the Security Council was expressly authorized in Article 2 (7) to take enforcement measures -- a case of dictatorial interference par excellence -- in respect of matters essentially within domestic jurisdiction. These representatives therefore contended that if the intervention were to be defined as "dictatorial interference", Article 2 (7) would become meaningless. Hence, it was obvious that the drafters of the Charter had rejected that definition and had used the word "intervene" in its ordinary dictionary meaning of "interfere"; recommendations or other non-coercive action by the Organization could constitute such interference. ^{314/}

344. No decision has been found containing a general definition of intervention in the sense of Article 2 (7).

^{313/} Case No. 2: G A (III/1), Plen., 146th mtg., p. 226; G A (III/2), 1st Com., 267th mtg., p. 308; G A (VIII), Suppl. No. 16, paras. 139-141.

Several representatives referred to the definition of intervention given by Lauterpacht in International Law and Human Rights, London, Stevens and Sons, Ltd., 1950, pp. 167-169 (G A (V), Ad Hoc Pol. Com., 42nd mtg., para. 57; 43rd mtg., para. 8; 45th mtg., para. 10).

Case No. 11: G A (VII), Ad Hoc Pol. Com., 18th mtg., para. 19; G A (VIII), Ad Hoc Pol. Com., 36th mtg., para. 30.

^{314/} Case No. 2: G A (III/2), 1st Com., 265th mtg., p. 277; G A (V), Ad Hoc Pol. Com., 42nd mtg., paras. 2-4; 43rd mtg., para. 56; 45th mtg., para. 53; G A (VI), Plen., 341st mtg., para. 37; G A (VIII), Ad Hoc Pol. Com., 21st mtg., para. 12.
Case No. 11: G A (VII), Plen., 381st mtg., paras. 21-28; Ad Hoc Pol. Com., 13th mtg., para. 6; 14th mtg., para. 11; 20th mtg., para. 21; G A (VIII), Ad Hoc Pol. Com., 32nd mtg., paras. 7 and 32; 38th mtg., para. 5; 40th mtg., para. 15.

345. In considering whether certain specific types of action constituted intervention, the following points were discussed:

1. Whether the inclusion of an item in the agenda constitutes intervention;
 2. Whether a recommendation -- in general or to a particular State -- constitutes intervention;
 3. Whether a request for a stay of execution constitutes intervention;
 4. Whether the establishment by the General Assembly of a commission to study the racial situation prevailing in a Member State constitutes intervention;
 5. Whether the examination of the domestic policy of a Member State by a commission of investigation established under Article 34 constitutes intervention;
 6. Whether resolutions by which the Security Council tenders its good offices to the parties to a dispute or calls upon them to cease hostilities and to settle the dispute by peaceful means constitute intervention.
- These questions are studied below.

1. Whether the inclusion of an item in the agenda constitutes intervention

346. The question whether the inclusion of an item in the agenda of a United Nations organ constituted intervention in the meaning of Article 2 (7) has arisen in the debates on the adoption of the agenda in cases Nos. 2, 7, 8, 9, 10, 11, 15, 18, 19, 20 and 21.

347. In each of those cases the inclusion of the item in the agenda was opposed by representatives who, stating that the item fell essentially within domestic jurisdiction, contended that the United Nations was debarred by Article 2 (7) from discussing it and, hence, from including it in the agenda. ^{315/} Some of the representatives taking that position maintained that the discussion of a matter by the United Nations constituted intervention within the meaning of Article 2 (7). ^{316/}

348. The representatives favouring inclusion advanced two main theses to refute the contention that Article 2 (7) debarred the United Nations from including the item in the agenda.

- ^{315/} Case No. 2: G A (VI), Plen., 341st mtg., para. 33; G A (VII), Plen., 380th mtg., paras. 130 et seqq.; G A (VIII) Plen., 435th mtg., paras. 6 et seqq.
 Case No. 7: G A (III/1), General Com., 43rd mtg., pp. 10 and 11; Plen., 142nd mtg., pp. 97, 98 and 103.
 Case No. 8: G A (III/2), Plen., 190th mtg., pp. 20-29; G A (V), Plen., vol. I, 284th mtg., paras. 137-157.
 Case No. 9: G A (VII), General Com., 79th mtg., para. 18.
 Case No. 10: G A (VII), General Com., 79th mtg., para. 18.
 Case No. 11: G A (VII), Plen., 381st mtg., paras. 1-67; G A (VIII), Plen., 435th mtg., paras. 19-48.
 Case No. 15: S C, 1st yr., 2nd Series, No. 7, 59th mtg., p. 196.
 Case No. 18: S C, 3rd yr., Nos. 36-51, 268th mtg., pp. 90, 91 and 96.
 Case No. 19: S C, 5th yr., No. 35, 493rd mtg., pp. 22 and 23.
 Case No. 20: S C, 6th yr., 559th mtg., paras. 3, 4 and 9-12.
 Case No. 21: S C, 8th yr., 619th mtg., paras. 25-31; 620th mtg., paras. 16-24; 623rd mtg., para. 29.
^{316/} Case No. 2: G A (VI), Plen., 341st mtg., para. 37.
 Case No. 11: G A (VII), Plen., 381st mtg., paras. 21-28; G A (VIII), Plen., 435th mtg., para. 32.
 Case No. 18: S C, 3rd yr., Nos. 36-51, 268th mtg., pp. 90-97.
 Case No. 20: S C, 6th yr., 559th mtg., para. 4.

349. On the one hand, some denied that the item fell essentially within domestic jurisdiction. 317/ The arguments supporting that thesis are studied in the section dealing with the meaning of the expression "matters which are essentially within ... domestic jurisdiction" (see below paragraphs 385-441).

350. On the other hand, some representatives held that, even if it were admitted that the item fell essentially within domestic jurisdiction, Article 2 (7) would not debar the United Nations from including it in the agenda and discussing it. The following arguments were advanced in support of this thesis.

351. First, it was maintained that the discussion of a matter did not constitute intervention. Hence, the inclusion of an item in the agenda could not violate Article 2 (7). 318/

352. Secondly, it was held that the inclusion of an item in the agenda did not prejudice the question whether the United Nations was competent to deal with it. It was necessary to include the item before the question of competence could even be discussed. 319/

353. Finally, in the Security Council, some members contended that the Council was obliged to include in its agenda and to discuss any question brought to its attention by a Member State. 320/

Decisions

354. Decisions to include items in the agenda after objections had been raised on the grounds of Article 2 (7) are dealt with in the following paragraphs of the General Survey: 44, 102, 112, 132, 143, 157, 174, 193, 256, 311 and 322.

355. Decisions not to include items in the agenda after objections had been raised, inter alia, on the grounds of Article 2 (7) are summarized in paragraphs 319 and 332.

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- 317/ Case No. 2: G A (VII), Plen., 380th mtg., para. 137.
 Case No. 7: G A (III/1), General Com., 43rd mtg., pp. 10 and 11.
 Case No. 8: G A (III/2), Plen., 190th mtg., pp. 24 and 28; G A (V), Plen., vol. I, 234th mtg., para. 159.
 Case No. 11: G A (VII), Plen., 381st mtg., paras. 97-107 and 123.
 Case No. 21: S C, 8th yr., 619th mtg., paras. 42, 50 and 103-109.
- 318/ Case No. 2: G A (III/1), Plen., 146th mtg., p. 226.
 Case No. 8: G A (III/2), Plen., 189th mtg., p. 12.
 Case No. 11: G A (VII), Plen., 381st mtg., para. 102.
- 319/ Case No. 2: G A (VII), Plen., 380th mtg., para. 136; G A (VIII), Plen., 435th mtg., para. 14.
 Case No. 8: G A (III/2), Plen., 190th mtg., p. 22.
 Case No. 11: G A (VII), Plen., 381st mtg., paras. 74, 141, 163 and 164;
 G A (VIII), Plen., 435th mtg., paras. 52 and 57.
 Case No. 18: S C, 3rd yr., Nos. 36-51, 268th mtg., pp. 95, 98 and 99.
 Case No. 20: S C, 6th yr., 559th mtg., paras. 6, 14 and 30.
 Case No. 21: S C, 8th yr., 621st mtg., paras. 91 and 96.
- 320/ Case No. 15: S C, 1st yr., 2nd Series, No. 7, 59th mtg., pp. 176 and 177.
 Case No. 18: S C, 3rd yr., Nos. 36-51, 268th mtg., p. 100.
 Case No. 20: S C, 6th yr., 559th mtg., para. 5.
 Case No. 21: S C, 8th yr., 622nd mtg., para. 25.

356. A decision to give the question of inclusion priority over the question of competence is dealt with in paragraph 174.

357. Statements by presiding officers on whether the inclusion of an item prejudged the question of competence are dealt with in paragraphs 196 and 274.

2. Whether a recommendation -- in general or to a particular State -- constitutes intervention

358. The question whether a recommendation -- in general or to a particular State -- constituted intervention has arisen in the debates in cases Nos. 1, 2 and 11.

359. During those debates it was contended, on the one hand, that a recommendation did not constitute intervention. ^{321/} The definition (mentioned in paragraph 342) of the term as "dictatorial interference" was invoked in support of that contention. ^{322/} It was maintained, on the other hand, that a recommendation constituted intervention ^{323/} (see paragraph 343) and that the definition of the latter term as "dictatorial interference" was not applicable to Article 2 (7). ^{324/}

360. There were also representatives who drew a distinction between recommendations addressed to a particular Member of the United Nations and those addressed to all Members. The former, they held, constituted intervention; the latter did not. ^{325/}

Decisions

361. In cases Nos. 1, 2 and 11 the General Assembly adopted several resolutions containing recommendations. These are dealt with in paragraphs 17-21, 35, 53-75, 184-186 and 205.

It should be noted, however, that several representatives who voted for those resolutions expressed no opinion on whether a recommendation constituted intervention but based their position on the contention that the matters dealt with in the resolutions did not fall essentially within domestic jurisdiction (see paragraphs 399, 409, 413 and 434).

362. The question whether a recommendation constituted intervention was also discussed in a report submitted to the Assembly in case No. 11 by a commission established to study the racial situation in a particular State. The relevant passage of the report may be found in paragraph 189.

^{321/} Case No. 1: G A (I/2), Plen., 58th mtg., pp. 1180, 1181 and 1193; 59th mtg., p. 1219.

Case No. 2: G A (I/2), Plen., 51st mtg., p. 1024; G A (VIII), Ad Hoc Pol. Com., 20th mtg., para. 44.

^{322/} See footnote 313.

^{323/} Case No. 1: G A (I/2), Plen., 58th mtg., pp. 1182, 1187 and 1188; 1st Com., 35th mtg., p. 230; 43rd mtg., pp. 294 and 295; G A (III/2), 1st Com., 259th mtg., p. 206; G A (V), Plen., vol. I, 304th mtg., para. 86; Ad Hoc Pol. Com., 25th mtg., para. 31; 27th mtg., para. 11; 28th mtg., para. 44.

^{324/} See footnote 314.

^{325/} Case No. 11: G A (VIII), Ad Hoc Pol. Com., 32nd mtg., para. 40; 33rd mtg., para. 49; 34th mtg., para. 8; 38th mtg., para. 6.

3. Whether a request for a stay of execution constitutes intervention

363. The question whether a request for a stay of execution constituted intervention has arisen in the debates in cases Nos. 1, 6 and 16.

364. During those debates some representatives contended that the adoption of a resolution recommending that a Member State suspend the execution of a death sentence imposed by one of its tribunals would constitute intervention in the domestic jurisdiction of that State. 326/ The contention was disputed on the grounds that humanitarian feelings should prevail over legal considerations. 327/

365. Some representatives also argued that the adoption of a resolution requesting the President of the General Assembly to negotiate with a State concerning the stay of execution or the release from prison of persons specifically designated in the resolution would constitute intervention in that State's domestic jurisdiction. 328/ The argument was disputed on the ground that a request addressed to the President of the Assembly could not constitute intervention. 329/

366. There were, however, representatives who held that a committee of the Assembly was competent to adopt a resolution which, without referring to any specific death sentence, requested the President of the Assembly to negotiate with a Member State concerning the suspension of the execution of death sentences imposed for political reasons by the military tribunals of that State. 330/ It does not appear that these representatives stated the reasons for adopting that position.

367. Finally, in the Security Council, some members contended that Article 2 (7) did not debar a commission of investigation established under Article 34 from requesting a State to postpone the execution of a person sentenced to death if the commission had reason to believe that the examination of that person as a witness would assist it in its investigation. 331/ A request made in those conditions would not constitute intervention. 332/

Decisions

368. Decisions on draft resolutions recommending that a Member State grant a stay of execution are dealt with in paragraph 89.

369. Decisions on draft resolutions containing requests addressed to the President of the General Assembly are noted in paragraphs 39 and 94-100.

370. Decisions on the question whether a commission of investigation might request a State to postpone the execution of a person sentenced to death are dealt with in paragraphs 261-264 and 269.

326/ Case No. 6: G A (III/1), 1st Com., 186th mtg., pp. 442, 445 and 446; G A (IV), 1st Com., 275th mtg., paras. 39 and 46; 276th mtg., para. 49.

327/ Case No. 6: G A (III/1), 1st Com., 186th mtg., p. 444; G A (IV), 1st Com., 275th mtg., para. 19.

328/ Case No. 1: G A (VI), 3rd Com., 391st mtg., paras. 23 and 25; 392nd mtg., para. 83.

329/ Case No. 1: G A (VI), 3rd Com., 392nd mtg., para. 71.

330/ Case No. 6: See the draft resolution submitted by Ecuador (G A (IV), 1st Com., Annex, p. 17, A/C.1/512/Rev.1) and the results of the roll-call vote "on the question whether the First Committee was competent to take a vote" on that draft resolution (G A (IV), 1st Com., 297th mtg., para. 61).

331/ Case No. 16: S C, 2nd yr., No. 10, 100th mtg., pp. 176 and 184.

332/ Case No. 16: S C, 2nd yr., No. 10, 101st mtg., p. 187.

4. *Whether the establishment by the General Assembly of a commission to study the racial situation prevailing in a Member State constitutes intervention*

371. The question whether the establishment by the General Assembly of a commission to study the racial situation prevailing in a Member State constituted intervention has arisen in the debates in case No. 11.

372. During those debates some representatives contended that the establishment of such a commission would not constitute intervention. 333/ Others took the opposite view. 334/

Decisions

373. The Assembly adopted a resolution establishing the above-mentioned commission in spite of objections raised on the grounds of Article 2 (7). The resolution is dealt with in paragraphs 180-183. It should be noted, however, that several representatives who voted for that resolution expressed no opinion on whether the establishment of the commission constituted intervention but based their position on the contention that the racial situation which the commission was instructed to study did not fall essentially within domestic jurisdiction (see paragraphs 409, 413 and 434).

374. In the report which it subsequently submitted to the Assembly, the Commission discussed the question whether studies undertaken by the Assembly constitute intervention. The relevant passage of the report is reproduced in paragraph 189.

5. *Whether the examination of the domestic policy of a Member State by a commission of investigation established under Article 34 constitutes intervention*

375. The question whether the examination of the domestic policy of a Member State by a commission of investigation constituted intervention has arisen in the debates in case No. 16. It will be recalled that, in that case, the Security Council established, under Article 34, a Commission of Investigation to ascertain the facts relating to a particular situation (see paragraph 259).

376. A Member State involved in that situation contended that the Commission was debarred by Article 2 (7) from examining its domestic policy since such an examination would constitute intervention in matters essentially within domestic jurisdiction. 335/

377. Members of the Commission, however, maintained that Article 2 (7) did not debar the Commission from examining the domestic policy of that State if such an examination could throw light on the nature and causes of the particular situation under investigation. 336/

333/ Case No. 11: G A (VII), Ad Hoc Pol. Com., 16th mtg., para. 19; 17th mtg., paras. 5 and 37.

334/ Case No. 11: G A (VII), Ad Hoc Pol. Com., 14th mtg., para. 11; 20th mtg., para. 21.

335/ Case No. 16: S/AC.4/PV.18; S C, 2nd yr., Suppl. No. 4, annex 10 (S/271), p. 54; *ibid.*, Special Suppl. No. 2, vol. I, p. 112, para. (b); vol. III, p. 342.

336/ Case No. 16: S C, 2nd yr., Special Suppl. No. 2, vol. I, p. 112; para. (b), 113; para. (d), p. 140.

Decisions

378. The relevant decisions of the Commission of Investigation are dealt with in paragraphs 267-269.

*6. Whether a resolution by which the Security Council tenders
its good offices to the parties to a dispute or calls upon
them to cease hostilities and to settle the dispute by
peaceful means constitutes intervention*

379. The question whether a resolution of the Security Council tendering its good offices to the parties to a dispute or calling upon them to cease hostilities and to settle the dispute by peaceful means constituted intervention has arisen in the debates in case No. 17.

380. During those debates a representative argued that, since one of the parties to the dispute under consideration claimed that the dispute fell essentially within its domestic jurisdiction, the Council could take no action as long as it had not ascertained that it had the right to intervene. 337/ Another representative, however, held that, even before ascertaining that it had the right to intervene, the Security Council was empowered to take such action as would not prejudice the claim of domestic jurisdiction. 338/ He therefore submitted two proposals to the Council.

381. The first was presented in the form of an amendment to a draft resolution pending before the Council. It called upon the parties to cease hostilities and to settle their dispute by peaceful means. It referred to no provision of the Charter and contained a clause expressly reserving the question of the Council's competence to deal with the dispute (see paragraphs 278-280).

382. Commenting on that amendment, some representatives stated that there was no contradiction between calling upon the parties to cease hostilities and to settle the dispute by peaceful means, on the one hand, and reserving the question of competence, on the other. They expressed the view, however, that the Council could not proceed to more authoritative decisions without first settling the question of competence. 339/

383. The second proposal was submitted in the form of a draft resolution which, without referring to any provision of the Charter, tendered the Council's good offices to the parties (see paragraph 295). Though the draft resolution contained no clause reserving the question of competence, several representatives contended that it did not prejudice the question. 340/ In support of that contention it was argued that any future action to which the offer of good offices might lead would be taken by the Council only after the acceptance of that offer by the parties and at their request. 341/

337/ Case No. 17: S C, 2nd yr., No. 68, 172nd mtg., p. 1653.

338/ Case No. 17: S C, 2nd yr., No. 68, 172nd mtg., pp. 1657 and 1658; No. 82, 193rd mtg., pp. 2177 and 2178.

339/ Case No. 17: S C, 2nd yr., No. 68, 173rd mtg., pp. 1695, 1696 and 1712.

340/ Case No. 17: S C, 2nd yr., No. 82, 193rd mtg., p. 2178; No. 83, 194th mtg., p. 2194; No. 103, 218th mtg., pp. 2732 and 2733 (see, however, ibid., 219th mtg., p. 2737) (see also footnote 422 below).

341/ Case No. 17: S C, 2nd yr., No. 82, 193rd mtg., p. 2178; 3rd yr., No. 134, 392nd mtg., p. 10; 4th yr., No. 6, 402nd mtg., p. 4.

Decisions

384. On 1 August 1947 the Security Council adopted the first proposal by a vote in parts, the clause reserving the question of competence being rejected (see paragraphs 280-284). The second proposal was adopted on 25 August 1947 without change (see paragraph 295). Several representatives who voted for these proposals, however, expressed the view that the question of the Council's competence was not in doubt since Chapter VII of the Charter was applicable to the dispute. Their position is studied below, in paragraphs 444-447.

B. The expression in Article 2 (7): "matters which are essentially within the domestic jurisdiction of any State"

385. On several occasions representatives discussed a general definition of the expression: "matters which are essentially within the domestic jurisdiction of any State". Two theses were advanced.

386. On the one hand, some representatives favoured 342/ the definition of domestic jurisdiction given by the Permanent Court of International Justice in its advisory opinion of 7 February 1923. 343/

387. Commenting on Article 15 (8) of the Covenant of the League of Nations, the Court had stated in that advisory opinion:

"The words 'solely within the domestic jurisdiction' [appearing in Article 15 (8) of the Covenant] seem ... to contemplate certain matters which, though they may very closely concern the interests of more than one State, are not, in principle, regulated by international law. As regards such matters, each State is sole judge.

"The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain.

"For the purpose of the present opinion, it is enough to observe that it may well happen that, in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States. In such a case, jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law. Article 15, paragraph 8, then ceases to apply as regards those States which are entitled to invoke such rules, and the dispute as to the question whether a State has or has not the right to take certain measures becomes in these circumstances a dispute of an international character ...". 344/

342/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 5th mtg., p. 41; G A (V), Ad Hoc Pol. Com., 44th mtg., para. 12.

Case No. 8: G A (III/2), Ad Hoc Pol. Com., 37th mtg., p. 122.

Case No. 9: G A (VI), Plen., 353rd mtg., para. 41.

Case No. 10: G A (VII), 1st Com., 540th mtg., para. 51.

343/ Nationality Decrees issued in Tunis and Morocco (French zone) on 8 November 1921, P C I J, Series B, No. 4, 1923.

344/ Ibid., pp. 23 and 24.

388. Other representatives, however, observed that the advisory opinion of 7 February 1923 was based on the words "a matter which ... is solely within ... domestic jurisdiction" which appeared in Article 15 (8) of the Covenant of the League of Nations. For those words the Charter had substituted "matters which are essentially within ... domestic jurisdiction. ^{345/} Therefore, it was contended, the definition given in the advisory opinion was not applicable to Article 2 (7). ^{346/}

389. There appears to be no decision of any United Nations organ containing a general definition of the domestic jurisdiction clause.

390. In addition to the problem of a general definition, representatives have discussed the question whether various matters of which the United Nations was seized fell essentially within domestic jurisdiction. In the course of such discussions, a number of representatives either expressly or by implication maintained that matters which were the subject of international obligations of a legal character could not, for that reason, fall essentially within domestic jurisdiction. This position has been asserted in respect of international obligations which arise from:

- (a) General international law;
- (b) The provisions of specific treaties;
- (c) The provisions of the Charter of the United Nations.

Paragraphs 391-441 below deal with the decisions and discussions relating to these three aspects.

1. Whether a matter governed by international law can fall essentially within domestic jurisdiction

391. In cases Nos. 7, 18 and 20, it was contended that the matters in question were governed by rules of international law and therefore could not fall essentially within domestic jurisdiction.

^{345/} The word "solely" appeared in the provision on domestic jurisdiction contained in the Dumbarton Oaks Proposals, on which the discussions at the San Francisco Conference were based. For the proceedings which led to the substitution of "essentially" for "solely", see the following documents of the Conference: Dumbarton Oaks Proposals, Chapter VIII, Section A, paragraph 7 (Doc. 1, G/1, UNCIO, vol. 3, p. 14); Amendments submitted by China, Soviet Union, United Kingdom and United States, Chapter II (Doc. 2, G/29, UNCIO, vol. 3, p. 623); Amendment submitted by Belgium (Doc. 1019, I/1/42, UNCIO, vol. 6, p. 510); Summary records of the 16th and 17th meetings of Committee I/1 (Doc. 976, I/1/40, UNCIO, vol. 6, pp. 494-499; Doc. 1019, I/1/42, UNCIO, vol. 6, pp. 507-513); Supplement to the report of the Rapporteur of Committee I/1 (Doc. 1070, I/1/34 (1) (a), UNCIO, vol. 6, p. 487); Verbatim Record of the 3rd meeting of Commission I (Doc. 1167, I/10, UNCIO, vol. 6, pp. 108-113).

^{346/} Case No. 9: G A (VII), 1st Com., 548th mtg., para. 55. There appears to be a clerical error in the record, which refers to the advisory opinion of 1921 instead of the advisory opinion of 1923.
Case No. 10: G A (VII), 1st Com., 538th mtg., para. 74; 545th mtg., para. 29.
Case No. 14: S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 177.
Case No. 22: Interpretation of Peace Treaties, I C J Reports, 1950, Dissenting opinion by Judge Krylov, p. 112.

392. In case No. 7, some representatives held that if a State took legislative and administrative measures in violation of diplomatic practices which were part of international law, that State could not claim that the measures fell essentially within its domestic jurisdiction. 347/

393. In case No. 18, which dealt with a complaint that a new political régime had been imposed on a Member State by the threat of use of force in violation of Article 2 (4) by another Member State, it was argued that if the allegation were true, the situation described in the complaint would not fall essentially within the domestic jurisdiction of the former State since it would be the result of an illegal action by one State against another. 348/

394. Finally, in case No. 20, it was contended that the expropriation of foreign property and rights did not fall essentially within domestic jurisdiction since it was asserted to be a matter which was governed by definite rules of international law laying down not only the circumstances in which foreign property and rights could validly be expropriated but also the conditions and modalities of expropriation. 349/

Decisions

395. No resolutions were adopted in connexion with cases Nos. 18 and 20 (see paragraphs 315, 316, 326 and 327).

396. The resolution adopted in connexion with case No. 7 referred to diplomatic practices (see paragraph 106). It should be noted that it referred also to the Charter provisions on human rights and on the maintenance of international peace (see paragraph 417).

397. Finally, in the advisory opinion delivered in connexion with case No. 22 and in the order delivered in connexion with case No. 23, the International Court of Justice expressed views relevant to the question whether matters governed by international law can fall essentially within domestic jurisdiction (see paragraphs 335 and 337). In particular, the Court stated in the advisory opinion delivered in connexion with case No. 22 that the interpretation of a treaty for the purpose of that advisory opinion "could not be considered as a question essentially within the domestic jurisdiction of a State. It is a question of international law which, by its very nature, lies within the competence of the Court".

2. Whether a matter governed by international agreements can fall essentially within domestic jurisdiction

398. The question whether a matter governed by an international agreement could fall essentially within domestic jurisdiction arose in the debates in cases Nos. 2, 8, 9, 10, 12, 18, and 21. During those debates the following arguments were advanced on the question.

399. Some representatives contended that a matter governed by an international agreement could not fall essentially within the domestic jurisdiction of a party to

347/ Case No. 7: G A (III/1), 6th Com., 135th mtg., p. 738; G A (III/2), Plen., 196th mtg., p. 143.

348/ Case No. 18: S C, 3rd yr., Nos. 36-51, 268th mtg., p. 99.

349/ Case No. 20: S C, 6th yr., 561st mtg., paras. 40 and 41.

the Agreement. ^{350/} The advisory opinion of 7 February 1923 rendered by the Permanent Court of International Justice ^{351/} was invoked in support of that contention. ^{352/} It was also pointed out that treaties were entered into for the purpose of creating international rights on the one side and international obligations on the other with regard to matters which would otherwise be within the domestic jurisdiction of each of the individual States. It would be a contradiction to state that the subject of the treaty obligation remained within domestic jurisdiction and could not, therefore, be the subject of international settlement or adjudication. ^{353/} Thus when the matter involved was a question of treaty observance, that matter was essentially one of international jurisdiction because of the very nature of a treaty which was an international instrument. ^{354/}

400. Other representatives held, on the contrary, that a matter which was "essentially" within a State's domestic jurisdiction retained that character even when

^{350/} Case No. 2: G A (I/2), General Com., 19th mtg., pp. 70-72; Plen., 52nd mtg., p. 1043; Joint 1st and 6th Com., 1st mtg., pp. 3-6; 2nd mtg., p. 10; 3rd mtg., p. 22; G A (II), Plen., vol. II, 120th mtg., p. 1143; 1st Com., 109th mtg., p. 451; G A (III/2), 1st Com., 265th mtg., p. 282; 266th mtg., pp. 285 and 289; 267th mtg., p. 307; G A (V), Ad Hoc Pol. Com., 45th mtg., para. 7; G A (VI), Ad Hoc Pol. Com., 32nd mtg., para. 7; G A (VII), Ad Hoc Pol. Com., 11th mtg., para. 28; G A (VIII), Ad Hoc Pol. Com., 16th mtg., para. 5; 17th mtg., paras. 8, 9 and 37; 18th mtg., para. 28; 19th mtg., paras. 58 and 59; 20th mtg., para. 43.

Case No. 8: G A (III/2), General Com., 58th mtg., pp. 17 and 19; Plen., 202nd mtg., p. 247; Ad Hoc Pol. Com., 35th mtg., pp. 77 and 91; 36th mtg., p. 102; 38th mtg., p. 130; G A (IV), Ad Hoc Pol. Com., 9th mtg., para. 19; 10th mtg., para. 10; 13th mtg., para. 36; G A (V), Ad Hoc Pol. Com., 6th mtg., para. 35. Case No. 9: G A (VII), 1st Com., 547th mtg., para. 2; G A (VIII), 1st Com., 630th mtg., paras. 9 and 64; 633rd mtg., para. 26; 634th mtg., para. 5; 635th mtg., paras. 17 and 29.

Case No. 10: G A (VII), 1st Com., 538th mtg., paras. 9 and 69; G A (VIII), 1st Com., 644th mtg., para. 1; 645th mtg., para. 27.

Case No. 12: G A (V), 3rd Com., 314th mtg., para. 28; E/CN.4/SR.211, p. 6; E/CN.4/SR.388, p. 11.

Case No. 18: S C, 3rd yr., No. 56, 281st mtg., p. 26.

Case No. 20: S C, 6th yr., 561st mtg., paras. 40 and 41.

Case No. 21: S C, 8th yr., 619th mtg., paras. 43, 105 and 106; 621st mtg., para. 88; 624th mtg., para. 17.

^{351/} See paras. 386 and 387.

^{352/} Case No. 2: G A (I/2), Joint 1st and 6th Com., 5th mtg., p. 41; G A (V), Ad Hoc Pol. Com., 44th mtg., para. 12.

Case No. 8: G A (III/2), General Com., 58th mtg., p. 19.

Case No. 9: G A (VII), 1st Com., 547th mtg., para. 2.

Case No. 10: G A (VII), 1st Com., 540th mtg., paras. 7 and 51.

^{353/} Case No. 22: Interpretation of Peace Treaties, I C J, Pleadings, 1950, pp. 327 and 328.

^{354/} Case No. 22: Ibid., pp. 280, 314 and 315.

it became the object of an obligation arising out of an international agreement signed by that State. 355/ The following arguments were submitted in support of that contention. First, it was pointed out that the Article 2 (7) referred to matters which were essentially -- and not solely -- within the domestic jurisdiction of a State. 356/ Second, it was argued that the Article applied to all the Articles of the Charter and made no distinction between provisions which imposed international obligations on States and those which did not. A matter which was essentially within domestic jurisdiction therefore did not lose that character when it became the object of a Charter obligation. This a fortiori was true of a matter which was the object of an ordinary treaty obligation. 357/ Third, it was contended that even though a treaty provision laid down an international obligation, that obligation existed only between the States parties to the treaty and hence did not, by that fact, remove the matter from domestic jurisdiction for purposes of the United Nations Charter. 358/

401. Finally, as regards protectorate treaties, some representatives contended that clauses by which the protected State entrusted the conduct of its foreign affairs to the protecting State had the effect of removing the relations between the two States from the jurisdiction of the United Nations and placing them essentially within the domestic jurisdiction of the protecting State. 359/ That contention was disputed on the grounds that, since the relations between the two States were governed by a treaty, even though a protectorate treaty, they could not fall essentially within the domestic jurisdiction of a party to the treaty. 360/

Decisions

402. No resolutions were adopted in connexion with cases Nos. 18, 20 and 21 (see above paragraphs 315, 316, 326, 327 and 332); those adopted in connexion with cases Nos. 9 and 10 made no reference to the international agreements which were invoked during the debates (see paragraphs 147, 161 and 162).

403. In connexion with case No. 2, the General Assembly adopted six resolutions. The first, resolution 44 (I), referred expressly to the international agreements invoked during the debates (see paragraph 56). The third, 395 (V), fourth, 511 (VI), fifth, 615 (VII), and sixth, 719 (VIII), recalled the first resolution (see paragraphs 61-75).

355/ Case No. 2: G A (III/2), 1st Com., 265th mtg., p. 276.

Case No. 9: G A (VIII), 1st Com., 630th mtg., para. 40.

Case No. 10: G A (VIII), 1st Com., 641st mtg., para. 27.

356/ Case No. 9: G A (VII), 1st Com., 548th mtg., para. 55. (See footnote 346.)

Case No. 10: G A (VII), 1st Com., 538th mtg., para. 74; 545th mtg., para. 29.

Case No. 22: Interpretation of Peace Treaties, I C J, Reports 1950, Dissenting opinion by Judge Krylov, p. 112.

357/ Case No. 2: G A (VIII), Ad Hoc Pol. Com., 14th mtg., para. 17.

358/ Case No. 8: G A (IV), Ad Hoc Pol. Com., 13th mtg., para. 20; G A (V), Plen., vol. I, 303rd mtg., para. 126; Ad Hoc Pol. Com., 4th mtg., para. 7.

Case No. 9: G A (VII), Plen., 392nd mtg., para. 92.

Case No. 10: G A (VII), Plen., 392nd mtg., para. 92.

359/ Case No. 9: G A (VII), 1st Com., 548th mtg., para. 26; G A (VIII), 1st Com., 630th mtg., paras. 26 and 27; 640th mtg., para. 5.

Case No. 10: G A (VII), 1st Com., 538th mtg., para. 53.

Case No. 21: S C, 8th yr., 620th mtg., paras. 18-23.

360/ See footnote 350, cases Nos. 9 and 10.

The second, resolution 265 (III), contained no reference, direct or indirect, to those international agreements (see paragraphs 57-59). Some of those resolutions referred also to Charter provisions on human rights and on the maintenance of peace (see paragraphs 416 and 437).

404. All three resolutions adopted by the Assembly in connexion with case No. 8 referred to the international agreements invoked during the debates (see paragraphs 115, 116, 124-126 and 137). They referred also to Charter provisions on human rights (see paragraph 418).

405. The decisions taken in connexion with case No. 12 may be found in paragraphs 213, 215 and 219.

406. Finally, in the advisory opinion delivered in connexion with case No. 22, the International Court of Justice expressed views relevant to the question whether matters governed by international agreements could fall essentially within domestic jurisdiction (see paragraphs 335 and 337).

3. Whether a matter dealt with by the Charter can fall essentially within domestic jurisdiction

407. The arguments submitted on the question whether a matter dealt with by the Charter could fall essentially within domestic jurisdiction may be divided into categories.

408. The arguments of the first category referred to the Charter as a whole and drew no distinction between provisions which imposed obligations on Member States and those which did not. These arguments are summarized below.

409. Some representatives contended that the mere fact that a matter was dealt with by the Charter placed it outside the domestic jurisdiction of Member States. Three arguments were advanced in support of that contention. First, it was held that since the Charter was an international agreement, the matters dealt with therein were removed from the domestic jurisdiction of the parties. ^{361/} To support that position it was argued that matters dealt with in the Charter had become matters of international concern and consequently were no longer within the reserved domain of States. Second, it was maintained that Article 10 of the Charter clearly showed that Article 2 (7) did

^{361/} Case No. 2: G A (V), Ad Hoc Pol. Com., 42nd mtg., para. 68.

Case No. 5: G A (VIII), 4th Com., 324th mtg., para. 2.

Case No. 7: G A (III/1), 6th Com., 134th mtg., pp. 723 and 724.

Case No. 10: G A (VII), 1st Com., 539th mtg., para. 46.

Case No. 11: G A (VII), Plen., 381st mtg., paras. 100 and 101; Ad Hoc Pol. Com., 18th mtg., para. 20; 21st mtg., para. 9.

Case No. 12: E/CN.4/SR.388, p. 11.

not limit the power of the General Assembly to take action "on any matters within the scope of the ... Charter". ^{362/} Finally, it was agreed that if it had been intended that Article 2 (7) should nullify express provisions of the Charter, that Article would have read "Notwithstanding the provisions of the Charter ..." instead of "Nothing contained in the present Charter ...". ^{363/}

410. Other representatives held, on the contrary, that the word "Nothing" had an overriding effect and prohibited any intervention in a State's domestic jurisdiction, regardless of any other provision of the Charter with the sole exception of the last phrase of Article 2 (7). A matter "essentially" within domestic jurisdiction remained so even when it was dealt with by a Charter provision ^{364/}, and thus was removed from the "scope of the Charter", as those words were used in Article 10. ^{365/}

411. The arguments of the second category referred to specific provisions of the Charter. In some of these arguments a distinction was drawn between provisions which imposed obligations on Member States and those which did not, the contention being that matters referred to in the latter provisions could fall essentially within domestic jurisdiction. The arguments in the second category are studied in the following subsections.

a. ARTICLE 2 (7) AND THE CHARTER PROVISIONS ON HUMAN RIGHTS

412. Arguments referring specifically to Charter provisions on human rights were submitted in cases Nos. 2, 7, 8, 11 and 12. They may be summarized as follows.

- ^{362/} Case No. 2: G A (V), Ad Hoc Pol. Com., 42nd mtg., para. 34; 45th mtg., paras. 7 and 8; G A (VII), Ad Hoc Pol. Com., 8th mtg., para. 36.
 Case No. 4: G A (IV), 4th Com., 121st mtg., para. 37.
 Case No. 7: G A (III/1), 6th Com., 134th mtg., p. 725; 135th mtg., p. 738.
 Case No. 8: G A (III/2), General Com., 58th mtg., pp. 15 and 16, 20; 59th mtg., p. 33, Ad Hoc Pol. Com., 35th mtg., p. 89; 39th mtg., p. 136.
 Case No. 9: G A (VIII), 1st Com., 630th mtg., paras. 45 and 46 (see, however, 637th mtg., para. 11); 635th mtg., para. 31.
 Case No. 10: G A (VII), 1st Com., 540th mtg., paras. 57 and 58; 545th mtg., para. 21.
 Case No. 11: G A (VII), Ad Hoc Pol. Com., 18th mtg., para. 13; 19th mtg., para. 5.
- ^{363/} Case No. 9: G A (VII), 1st Com., 552nd mtg., para. 17.
- ^{364/} Case No. 2: G A (I/2), Joint 1st and 6th Com., 1st mtg., p. 3; G A (III/2), Plen., 212th mtg., p. 441; 1st Com., 265th mtg., p. 275; G A (V), Ad Hoc Pol. Com., 42nd mtg., para. 40; G A (VII), Ad Hoc Pol. Com., 10th mtg., para. 16; G A (VIII), Ad Hoc Pol. Com., 21st mtg., para. 12.
 Case No. 4: G A (IV), Plen., 262nd mtg., paras. 177 and 178.
 Cases Nos. 9 and 10: G A (VIII), 1st Com., 630th mtg., para. 19.
 Case No. 11: G A (VII), Plen., 381st mtg., paras. 15-20; Ad Hoc Pol. Com., 14th mtg., para. 9; 16th mtg., paras. 37, 73 and 75; G A (VIII), Ad Hoc Pol. Com., 32nd mtg., paras. 7 and 28; 36th mtg., para. 14; 38th mtg., para. 5.
- ^{365/} Case No. 9: G A (VIII), 1st Com., 630th mtg., para. 29.
 Case No. 4: G A (VII), 4th Com., 266th mtg., para. 18.
 Case No. 11: G A (VII), Ad Hoc Pol. Com., 14th mtg., para. 13.

413. Several representatives laid down the premise that the Charter provisions on human rights and fundamental freedoms, and in particular Articles 1 (3), 55 c and 56, created international obligations which all Member States 366 had undertaken to respect. They disagreed, however, on the conclusions to be drawn from that premise. Most of these representatives contended that since human rights and fundamental freedoms were governed by international obligations, they came under the jurisdiction of the United Nations, and not under the domestic jurisdiction of its Members. 367 Others drew a distinction between accidental violations of human rights and fundamental freedoms, affecting individuals or small groups, and systematic violations which had international repercussions and created unrest beyond the borders of the State where they occurred. The former could fall essentially within domestic jurisdiction, the latter could not. 368 Still others argued that Article 2 (7) applied to the whole Charter and made no distinction between provisions which imposed international obligations and those which did not. It could, therefore, not be evaded by invoking the existence of international obligations created by other provisions of the Charter, even those on human rights. 369

414. There were also representatives who, rejecting the above-mentioned premise, contended that the Charter did not impose international obligations in respect of human rights and fundamental freedoms and did not remove them from the domestic jurisdiction of States, where they traditionally belonged. 370 In support of that

366/ In case No. 8 some representatives contended that Article 55 imposed obligations on non-member States as well (G A (III/2), General Com., 58th mtg., pp. 15 and 16; 59th mtg., p. 25; Ad Hoc Pol. Com., 38th mtg., p. 128; G A (IV), Ad Hoc Pol. Com., 7th mtg., para. 3).

Other representatives held, on the contrary, that non-member States were not legally bound to comply with the Charter provisions on human rights (G A (III/2), General Com., 58th mtg., p. 11; Ad Hoc Pol. Com., 35th mtg., p. 80).

367/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 2nd mtg., p. 10; 3rd mtg., pp. 25, 28 and 29; G A (II), 1st Com., 107th mtg., p. 437; 109th mtg., pp. 449 and 450; G A (III/2), 1st Com., 263rd mtg., p. 257; 265th mtg., p. 282; 266th mtg., p. 292; G A (V), Ad Hoc Pol. Com., 44th mtg., para. 2; G A (VIII), Ad Hoc Pol. Com., 17th mtg., paras. 13, 14, 37 and 38; 19th mtg., para. 52; 20th mtg., paras. 22 and 23.

Case No. 7: G A (III/1), General Com., 43rd mtg., p. 10; 6th Com., 136th mtg., p. 745; 138th mtg., pp. 765 and 768.

Case No. 8: G A (III/2), Plen., 190th mtg., p. 25; 202nd mtg., p. 247; General Com., 59th mtg., p. 25; Ad Hoc Pol. Com., 35th mtg., p. 76; G A (IV), Ad Hoc Pol. Com., 8th mtg., para. 4; 11th mtg., para. 42.

Case No. 11: G A (VII), Ad Hoc Pol. Com., 13th mtg., paras. 33, 34 and 40-42; 18th mtg., paras. 26, 33 and 34; 19th mtg., para. 21; G A (VIII), Ad Hoc Pol. Com., 35th mtg., para. 19; 39th mtg., para. 49; 40th mtg., para. 6.

Case No. 12: G A (V), Plen., vol. II, 317th mtg., para. 134; E/CN.4/SR.210, p. 24.

368/ Case No. 8: G A (V), Ad Hoc Pol. Com., 6th mtg., para. 34.

Case No. 11: G A (VII), Ad Hoc Pol. Com., 18th mtg., paras. 57-59.

Case No. 12: E/CN.4/SR.211, p. 11.

369/ Case No. 2: G A (VIII), Ad Hoc Pol. Com., 14th mtg., para. 17.

Case No. 11: G A (VIII), Ad Hoc Pol. Com., 32nd mtg., para. 29.

370/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 1st mtg., pp. 3 and 4; G A (III/2), 1st Com., 265th mtg., p. 278; G A (V), Ad Hoc Pol. Com., 41st mtg., para. 51.

Case No. 11: G A (VII), Ad Hoc Pol. Com., 16th mtg., para. 37.

position, they asserted that the provisions relating to such rights and freedoms were declarations of purposes and principles, rather than obligations, and that it was left to the Member States to carry them out. 371/ Moreover, the fact that human rights and fundamental freedoms had not been defined in the Charter was a significant indication that they did not impose obligations. 372/

415. Finally, some representatives maintained that the records of the San Francisco Conference clearly showed that the Charter provisions on human rights were not intended to authorize the United Nations to intervene in the domestic jurisdiction of Member States. 373/

Decisions

416. The General Assembly adopted six resolutions in connexion with case No. 2. Three of these, namely, resolutions 265 (III), 615 (VII) and 719 (VIII), referred to the Purposes and Principles of the Charter (see paragraphs 59, 70 and 74). Article 1 (3) of those Purposes and Principles deals with human rights. It should be noted that some of the resolutions adopted in connexion with case No. 2 referred also to international agreements (see paragraph 403) and to the Charter provisions on the maintenance of peace (see paragraph 437).

417. The resolution adopted by the General Assembly in connexion with case No. 7 recommended that a Member State should withdraw certain measures it had taken in respect of its female citizens married to aliens (see paragraphs 105 and 106). The resolution drew a distinction between the measures affecting the wives of ordinary foreign citizens and those affecting the wives of members of diplomatic missions. It

371/ Case No. 2: G A (V), Ad Hoc Pol. Com., 41st mtg., para. 50.

Case No. 11: G A (VII), Ad Hoc Pol. Com., 13th mtg., para. 8; 20th mtg., para. 18; G A (VIII), Ad Hoc Pol. Com., 36th mtg., para. 20.

372/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 1st mtg., pp. 3 and 4; G A (III/2), 1st Com., 265th mtg., p. 278; G A (V), Ad Hoc Pol. Com., 41st mtg., para. 51.

Case No. 11: G A (VII), Ad Hoc Pol. Com., 13th mtg., para. 8; G A (VIII), 32nd mtg., para. 11; 41st mtg., para. 38.

373/ Case No. 2: G A (III/2), Plen., 212th mtg., pp. 444 and 445; G A (V), Ad Hoc Pol. Com., 41st mtg., para. 55.

Case No. 7: G A (III/1), 6th Com., 137th mtg., p. 748.

Case No. 8: G A (IV), Ad Hoc Pol. Com., 10th mtg., para. 11; 12th mtg., para. 19; G A (V), Plen., vol. I, 284th mtg., para. 146.

Case No. 11: G A (VII), Plen., 381st mtg., paras. 36-44.

In referring to the records of the San Francisco Conference, representatives quoted paragraph 10 of the Report of Committee II/3. That paragraph read:

"10. There were some misgivings that the statement of purposes now recommended [Article 55] implied that the Organization might interfere in the domestic affairs of member countries. To remove all possible doubt, the Committee agreed to include in its records the following statement:

"The members of Committee 3 of Commission II are in full agreement that nothing contained in Chapter IX [of the Charter] can be construed as giving authority to the Organization to intervene in the domestic affairs of Member States." (Documents of the United Nations Conference on International Organization, vol. 8, pp. 81 and 82, doc. 924, II/12.)

declared that the former measures were not in conformity with the Charter and referred expressly to the human rights provisions contained in the Preamble and in Articles 1(3) and 55 c. The latter were declared to be not in conformity with the Charter, contrary to diplomatic practices (see paragraph 396) and likely to impair friendly relations among nations (Article 14) (see paragraph 438).

418. In connexion with case No. 8 the Assembly adopted three resolutions, all of which referred to Charter provisions on human rights (see paragraphs 115, 123 and 135) and to international agreements (see paragraph 404).

419. The three resolutions adopted by the Assembly in connexion with case No. 11 referred to the Charter provisions on human rights (see paragraphs 181, 186 and 203). One of those resolutions, 616 B (VII), called upon "all Member States to bring their policies into conformity with their obligation under the Charter to promote the observance of human rights and fundamental freedoms" (see paragraph 186).

420. The decisions taken in connexion with case No. 12 may be found above in paragraphs 213, 215 and 219.

421. Finally, in an advisory opinion delivered in connexion with case No. 22, the International Court of Justice expressed views relevant to the question whether matters governed by Charter provisions on human rights could fall essentially within domestic jurisdiction (see paragraph 335).

b. ARTICLE 2 (7) AND THE CHARTER PROVISIONS REGARDING
NON-SELF-GOVERNING TERRITORIES

422. In addition to the considerations relating to the Charter as a whole (see paragraphs 407-411), arguments dealing specifically with the provisions regarding Non-Self-Governing Territories were submitted in cases Nos. 3, 4, 5, 9 and 10. These arguments may be summarized as follows:

423. Some representatives contended that the administration of a Non-Self-Governing Territory fell essentially within the Administering State's domestic jurisdiction ^{374/} and drew the following conclusions. The General Assembly was not authorized to recommend that the Economic and Social Council convene conferences of representatives of Non-Self-Governing Territories. ^{375/} Such a recommendation would constitute a violation of Article 2 (7) even if it specified that the conferences should be convened by the Council in co-operation with the administering Powers concerned. ^{376/} The Assembly was not competent to establish permanent machinery to study the

^{374/} Case No. 3: G A (I/2), Plen., 64th mtg., pp. 1331, 1332 and 1346.

Case No. 4: G A (II), 4th Com., 42nd mtg., pp. 72 and 73; G A (IV), Plen., 262nd mtg., paras. 170-172 and 179; A/AC.28/SR.16, pp. 6, 9 and 10.

Case No. 5: G A (VII), 4th Com., 274th mtg., para. 14; A/AC.28/SR.2, p. 7, A/AC.28/SR.4, p. 3; A/AC.28/SR.16, pp. 6, 9 and 10.

Case No. 9: G A (VII), 1st Com., 548th mtg., para. 27; G A (VIII), 1st Com., 630th mtg., para. 19.

Case No. 10: G A (VII), 1st Com., 538th mtg., para. 53; 545th mtg., paras. 29 and 30.

^{375/} Case No. 3: G A (I/2), Plen., 64th mtg., p. 1346.

^{376/} Case No. 3: G A (I/2), Plen., 64th mtg., p. 1336.

information transmitted under Article 73 e 377/; neither was it competent to make recommendations on the policies to be followed with respect to any particular Non-Self-Governing Territory. 378/ Each Member State had the exclusive right to determine which of the territories under its administration came within the scope of Article 73 e 379/. The Assembly could only recommend the general principles which should guide Member States in that determination. 380/

424. Other representatives disputed the contention that the provisions of Article 2 (7) precluded consideration by the General Assembly of matters relating to Non-Self-Governing Territories. 381/ They held, in particular, that the General Assembly had the right to study the information transmitted under Article 73 e 382/ and to ascertain to what extent the obligations imposed on Member States by Chapter XI of the Charter were being fulfilled. 383/ Moreover, they could not accept the view that the determination of the territories coming within the scope of Article 73 e should be made exclusively by the administering States concerned. 384/

Decisions

425. The resolution adopted in connexion with case No. 9 did not refer to the Charter provisions regarding Non-Self-Governing Territories (see paragraph 147; see also, however, footnote 131).

426. The resolutions adopted in connexion with cases Nos. 3, 4, 5 and 10 referred to the Charter provisions regarding Non-Self-Governing Territories. Relevant passages of the resolutions adopted in connexion with cases Nos. 3 and 10 are reproduced in paragraphs 80 and 162. The resolutions adopted in connexion with cases Nos. 4 and 5

377/ Case No. 4: G A (II), Plen., 108th mtg., p. 734; G A (IV), Plen., 262nd mtg., para. 181; 4th Com., 117th mtg., para. 37; 120th mtg., paras. 36-38; G A (VII), 4th Com., 266th mtg., para. 20.

378/ Case No. 4: G A (II), Plen., vol. I, 107th mtg., p. 683; 108th mtg., p. 734.

379/ Case No. 5: A/AC.28/SR.2, p. 7; A/AC.28/SR.4, p. 3; G A (III), Suppl. No. 12, p. 2; G A (VII), Plen., 402nd mtg., para. 41; 4th Com., 274th mtg., paras. 40 and 65; G A (VIII), 4th Com., 322nd mtg., para. 47; 330th mtg., para. 5.

380/ Case No. 5: G A (VII), Plen., 402nd mtg., para. 41; 4th Com., 274th mtg., para. 40; G A (VIII), 4th Com., 322nd mtg., para. 47; 330th mtg., para. 5.

381/ Case No. 3: G A (I/2), Plen., 64th mtg., p. 1338.

Case No. 4: G A (II), Plen., vol. I, 107th mtg., p. 690; 108th mtg., pp. 704 and 705; G A (IV), Plen., 262nd mtg., para. 144.

Case No. 5: G A (III), Suppl. No. 12, p. 2; G A (VII), 4th Com., 274th mtg., para. 19; G A (VIII), 4th Com., 322nd mtg., para. 37; 323rd mtg., para. 12; 324th mtg., para. 10; 325th mtg., para. 27; 326th mtg., paras. 9 and 95.
Case No. 9: G A (VII), 1st Com., 550th mtg., para. 41; 552nd mtg., paras. 24 and 25; G A (VIII), 1st Com., 630th mtg., para. 9; 638th mtg., para. 1.
Case No. 10: G A (VII), 1st Com., 538th mtg., para. 33; 538th mtg., paras. 60 and 64; 539th mtg., para. 48; 543rd mtg., para. 58; G A (VIII), 1st Com., 644th mtg., para. 10.

382/ Case No. 4: G A (II), Plen., vol. I, 107th mtg., p. 684.

383/ Case No. 5: G A (VII), Suppl. No. 18, para. 77; G A (VIII), 4th Com., 323rd mtg., para. 12.

384/ Case No. 5: G A (III), Suppl. No. 12, p. 2; G A (VIII), 4th Com., 322nd mtg., para. 37; 323rd mtg., para. 12; 324th mtg., para. 17; 325th mtg., paras. 27 and 42.

are dealt with in the study on Article 73 (for case No. 4 see II, B, 3; for case No. 5 see II, C, 1.). It should be noted that the resolution adopted in connexion with case No. 10 referred also to the Charter provisions on self-determination (see paragraph 431) and on the maintenance of peace (see paragraph 439).

C. ARTICLE 2 (7) AND THE CHARTER PROVISIONS ON
THE SELF-DETERMINATION OF PEOPLES

427. Arguments referring specifically to the Charter provisions on the self-determination of peoples were made in cases Nos. 9, 10 and 13. These arguments may be summarized as follows.

428. It was contended, on the one hand, that since Articles 1 (2) and 55 laid down the principle of the self-determination of peoples, a matter governed by that principle did not fall essentially within the domestic jurisdiction of Member States. ³⁸⁵

429. It was argued, on the other hand, that the manner in which a State applied the principle of self-determination fell essentially within that State's domestic jurisdiction. ³⁸⁶ It was held, in particular, that Article 2 (7) debarred the United Nations from recommending that a Member State organize a plebiscite to determine the aspirations of a minority group. ³⁸⁷

Decisions

430. The resolution adopted in connexion with case No. 9 referred to Article 1 (2) of the Charter (see paragraph 147). It also referred to the Charter provisions on the maintenance of peace (see paragraph 439).

431. The resolution adopted in connexion with case No. 10 referred to Article 1 (2) of the Charter (see paragraph 161). It also referred to the Charter provisions on the maintenance of peace (see paragraph 439) as well as those regarding Non-Self-Governing Territories (see paragraph 426).

432. The resolution adopted in connexion with case No. 13 referred to Articles 1 (2) and 55 (see paragraph 225).

D. ARTICLE 2 (7) AND THE CHARTER PROVISIONS ON
THE MAINTENANCE OF INTERNATIONAL PEACE

433. Arguments referring specifically to the Charter provisions on the maintenance of international peace were submitted in cases Nos. 1, 2, 7, 9, 10, 11 and 14. These arguments are summarized below.

³⁸⁵/ Case No. 9: G A (VII), 1st Com., 549th mtg., paras. 28 and 29; 551st mtg., para. 19.

Case No. 10: G A (VII), 1st Com., 538th mtg., para. 9; 540th mtg., para. 22; 543rd mtg., para. 69; 545th mtg., para. 21.

Case No. 13: G A (VII), 3rd Com., 448th mtg., para. 30.

³⁸⁶/ Case No. 13: E/AC.7/SR.292, p. 5.

³⁸⁷/ Case No. 13: G A (VII), 3rd Com., 445th mtg., para. 29.

434. In the General Assembly, some representatives held that, Article 2 (7) notwithstanding, the Assembly was always competent to deal with a situation which threatened the peace. 388/ Others made the same contention in respect of a situation which had international repercussions or could lead to international friction. 389/ Articles 11 390/ and 14 391/ were invoked to support that position. Those arguments were disputed on the grounds that the sole exception to the principle laid down in Article 2 (7) was to be found in the last phrase of that provision. The exception applied only to the enforcement measures which the Security Council could take under Chapter VII. 392/ The Charter provisions on the maintenance of international peace, and Articles 11 and 14 in particular, did not authorize the General Assembly to intervene in matters essentially within domestic jurisdiction. 393/

388/ Case No. 1: G A (III/2), 1st Com., 258th mtg., p. 187; 262nd mtg., p. 234.

Case No. 9: G A (VII), 1st Com., 548th mtg., para. 31.

Case No. 10: G A (VII), 1st Com., 546th mtg., para. 36.

Case No. 11: G A (VIII), Ad Hoc Pol. Com., 36th mtg., para. 3; 37th mtg., para. 32.

389/ Case No. 1: G A (I/2), Plen., 58th mtg., p. 1180; G A (II), 1st Com., 107th mtg., p. 428; G A (III/2), 1st Com., 258th mtg., p. 188; Plen., 214th mtg., p. 480.

Case No. 9: G A (VII), 1st Com., 551st mtg., para. 24; G A (VIII), 1st Com., 634th mtg., para. 4.

Case No. 10: G A (VII), 1st Com., 538th mtg., para. 6; 543rd mtg., para. 33.

Case No. 11: G A (VII), Ad Hoc Pol. Com., 15th mtg., para. 11; 18th mtg., para. 59.

390/ Case No. 2: G A (VIII), Ad Hoc Pol. Com., 19th mtg., para. 27.

Case No. 9: G A (VII), Plen., 407th mtg., para. 13; 1st Com., 548th mtg., para. 48; G A (VIII), 1st Com., 635th mtg., para. 31.

Case No. 10: G A (VIII), 1st Com., 644th mtg., para. 30.

Case No. 11: G A (VII), Ad Hoc Pol. Com., 18th mtg., para. 16.

391/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 3rd mtg., p. 28; 5th mtg., pp. 40 and 41; G A (III/2), 1st Com., 267th mtg., pp. 307 and 311; 268th mtg., p. 312; G A (VIII), Ad Hoc Pol. Com., 19th mtg., paras. 27 and 35.

Case No. 7: G A (III/1), 6th Com., 134th mtg., p. 725; 137th mtg., pp. 750 and 751.

Case No. 9: G A (VII), Plen., 407th mtg., para. 13; 1st Com., 548th mtg., para. 48; G A (VIII), 1st Com., 635th mtg., para. 31.

Case No. 10: G A (VII), 1st Com., 545th mtg., para. 42; G A (VIII), 1st Com., 644th mtg., para. 30.

Case No. 11: G A (VII), Plen., 381st mtg., para. 102; Ad Hoc Pol. Com., 18th mtg., paras. 13 and 14; G A (VIII), Ad Hoc Pol. Com., 39th mtg., para. 13.

392/ Case No. 1: G A (I/2), Plen., 58th mtg., p. 1188; 1st Com., 36th mtg., p. 242; 37th mtg., pp. 247, 248, 251-253; G A (II), Plen., 118th mtg., p. 1091; 1st Com., 107th mtg., pp. 424 and 425; G A (III/2), Plen., 213th mtg., p. 466.

Case No. 2: G A (VII), Plen., 392nd mtg., para. 96; G A (VIII), 1st Com., 630th mtg., para. 29.

Case No. 10: G A (VII), Plen., 392nd mtg., para. 96; 1st Com., 545th mtg., para. 28.

393/ Case No. 2: G A (III/2), 1st Com., 265th mtg., p. 275; 268th mtg., p. 315; G A (V), Ad Hoc Pol. Com., 43rd mtg., para. 54.

Case No. 9: G A (VII), 1st Com., 548th mtg., para. 28; G A (VIII) 1st Com., 630th mtg., paras. 29 and 51.

Case No. 10: G A (VIII), 1st Com., 630th mtg., paras. 29 and 51.

Case No. 11: G A (VII), Plen., 381st mtg., paras. 85-90; Ad Hoc Pol. Com., 13th mtg., para. 5; G A (VIII), Ad Hoc Pol. Com., 32nd mtg., paras. 7-28; 36th mtg., para. 14.

435. In the Security Council, it was contended that a situation which caused international friction ^{394/} or the continuance of which was likely to endanger the maintenance of international peace (Articles 33 and 34) ^{395/} did not fall essentially within domestic jurisdiction. That contention was disputed on the grounds that the sole exception to the principle laid down in Article 2 (7) was to be found in the last phrase of that provision, and the exception was not applicable to situations which did not constitute an actual threat to the peace, breach of the peace, or act of aggression (Article 39). ^{396/}

Decisions

436. The resolutions adopted by the General Assembly in connexion with case No. 1 did not refer to Charter provisions on the maintenance of international peace (see paragraphs 13, 18-21, 24, 34 and 35).

437. The Assembly adopted six resolutions in connexion with case No. 2. The first, resolution 44 (I), referred expressly to Article 14 of the Charter (see paragraph 56). The third, 395 (V), fourth, 511 (VI), and fifth, 615 (VII), recalled the first resolution (see paragraphs 61, 65 and 69). It should be noted that some of the resolutions adopted in connexion with case No. 2 referred also to international agreements (see paragraph 403) and to Charter provisions on human rights (see paragraph 416).

438. The resolution adopted in connexion with case No. 7 (see paragraphs 105 and 106) referred to Article 14, to diplomatic practices and to Charter provisions on human rights (see paragraphs 396 and 417).

439. The resolutions adopted in connexion with cases Nos. 9 (see paragraph 147) and 10 (see paragraph 161) referred to Article 11. They also referred to the Charter provisions on self-determination (see paragraphs 430 and 431). Furthermore the resolution adopted in connexion with case No. 10 referred to the Charter provisions regarding Non-Self-Governing Territories (see paragraph 426).

440. One of the resolutions adopted in connexion with case No. 11, 721 (VIII), referred to Article 14 (see paragraph 204). It also referred to Charter provisions on human rights (see paragraph 419).

441. Finally, in connexion with case No. 14, the report of a sub-committee appointed by the Security Council expressed the view that, although there was no actual threat to the peace in the sense of Chapter VII, the fact that the continuance of the particular situation was likely to endanger the maintenance of international peace and security took the matter beyond domestic jurisdiction (see paragraph 243).

^{394/} Case No. 14: S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 166.

^{395/} Case No. 14: S C, 1st yr., 1st Series, No. 2, 44th mtg., pp. 317 and 318.

^{396/} Case No. 14: S C, 1st yr., 1st Series, No. 2, 35th mtg., pp. 181 and 182; 46th mtg., pp. 345 and 346.

C. The last phrase of Article 2 (7):
 "But this principle shall not prejudice the application
 of enforcement measures under Chapter VII"

442. The last phrase of Article 2 (7) was invoked during the debates in cases Nos. 14 and 17.

443. During the Security Council's consideration of case No. 14 -- the Spanish question -- the representative of a permanent member contended that, although the situation in Spain was of a domestic nature, it constituted a threat to the peace and therefore came under Chapter VII of the Charter. Referring to the last phrase of Article 2 (7), he maintained that the Charter authorized the Council to take definite measures in respect of any State whose domestic situation constituted a threat to the peace. 397/ He therefore supported 398/ a draft resolution 399/ by which the Security Council would have called upon Member States to sever diplomatic relations with Spain "in accordance with ... Articles 39 and 41 of the Charter". (See paragraph 233.) Other representatives, however, opposed the draft resolution on the grounds that the situation in Spain did not constitute a threat to the peace and that Articles 39 and 41 were therefore not applicable. 400/

444. During the Security Council's consideration of case No. 17 -- the Indonesian question -- the Netherlands claimed that the question fell essentially within its domestic jurisdiction and that the Council was therefore not competent to deal with it. (See paragraph 277.) Several representatives, holding that the situation in Indonesia came under Chapter VII of the Charter, advanced the following arguments to refute the claim of domestic jurisdiction.

445. First, it was argued that even if the Indonesian question fell essentially within domestic jurisdiction, the last phrase of Article 2 (7) authorized the Council to take action under Article 39 of the Charter. 401/

446. Second, it was contended that, since the question came under Chapter VII, it fell outside the scope of domestic jurisdiction by virtue of the last phrase of Article 2 (7). 402/ The representatives making that contention held that the first resolution adopted on the Indonesian question, though it did not refer to any specific provision of the Charter, was nevertheless based on Chapter VII. 403/ It will be recalled that by that resolution the Council called upon the parties to cease hostilities and to settle their dispute by peaceful means (see paragraph 284).

447. Finally, it was held that a distinction should be drawn between the measures aimed at stopping the fighting in Indonesia and the measures aimed at achieving a long-

397/ Case No. 14: S C, 1st yr., 1st Series, No. 2, 35th mtg., pp. 185 and 186.

398/ Case No. 14: S C, 1st yr., 1st Series, No. 2, 35th mtg., p. 193.

399/ Case No. 14: S C, 1st yr., 1st Series, No. 2, 34th mtg., p. 167.

400/ Case No. 14: S C, 1st yr., 1st Series, No. 2, 34th mtg., pp. 176 and 177; 35th mtg., pp. 180 and 181, 48th mtg., p. 384.

See also S C, 1st yr., 1st Series, Special Suppl., p. 8, para. 22.

401/ Case No. 17: S C, 2nd yr., No. 68, 173rd mtg., p. 1684.

402/ Case No. 17: S C, 2nd yr., No. 84, 195th mtg., pp. 2216, 2217 and 2222.

403/ Case No. 17: S C, 2nd yr., No. 77, 185th mtg., p. 2015; No. 84, 195th mtg., p. 2216; 3rd yr., No. 133, 390th mtg., pp. 6 and 7.

range settlement of the dispute. The former were based on Article 40 of Chapter VII and therefore did not prejudice the question of domestic jurisdiction, 404, but as regards the latter there were grave doubts as to the competence of the Council under Article 2 (7). The Council, therefore, could only take such measures as did not prejudice the question of competence -- for instance, it could tender its good offices to the parties. 405;

448. There were also representatives who doubted whether Chapter VII was applicable to the situation in Indonesia and whether the Council was competent under Article 2 (7) to deal with that situation. 406/. They did not, however, oppose the resolution of 1 August 1947 and they supported the resolution of 25 August 1947 by which the Council tendered its good offices to the parties, since in their view those resolutions did not prejudice the question of competence. Their position has been described in paragraphs 379-383.

Decisions

449. The relevant decisions taken in connexion with case No. 14 are dealt with in paragraphs 253, 258 and 252.

450. The resolutions adopted by the Security Council in connexion with case No. 17 over objections raised on the grounds of Article 2 (7) are dealt with in paragraphs 255, 284, 292, 293, 295, 297 and 302-306. None of those resolutions referred either to Chapter VI or to Chapter VII of the Charter.

D. Procedures by which Article 2 (7) was invoked 407/

451. The Charter contains no provision concerning a procedure for the application of Article 2 (7). It does not require that a State objecting to United Nations action on the grounds of Article 2 (7) submit a specific proposal on competence; nor does it prohibit the submission of such a proposal at any stage of the debates. In practice, proposals relating specifically to competence have been submitted in some cases and not in others.

452. In cases Nos. 1, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 18, 19 and 21 the States which invoked Article 2 (7), submitted no specific proposal concerning competence. Some informed the Organization that, since the question under consideration fell essentially within their domestic jurisdiction, they would not participate in the debates thereon (see paragraphs 113, 121, 144, 150, 158, 165 and 312). The others participated in the debates and, either before or after the adoption of the agenda, voiced their objections on the grounds of Article 2 (7).

404/ Case No. 17: S C, 2nd yr., No. 82, 193rd mtg., pp. 2175 and 2176; 3rd yr., No. 132, 389th mtg., p. 43.

405/ Case No. 17: S C, 2nd yr., No. 82, 193rd mtg., pp. 2177 and 2178.

406/ Case No. 17: S C, 2nd yr., No. 68, 172nd mtg., pp. 1653 and 1654, 1655 and 1656; 173rd mtg., pp. 1676 and 1677; 3rd yr., No. 134, 392nd mtg., pp. 9 and 10; 4th yr., No. 2, 398th mtg., p. 11; No. 6, 402nd mtg., p. 4.

407/ Cases Nos. 22 and 23, which were considered by the International Court of Justice, are not dealt with in this section since the procedure followed was governed by the Statute of the Court.

453. In cases Nos. 2, 6, 11, 17 and 20, States not only invoked Article 2 (7) in their interventions in the debates but also submitted specific proposals concerning competence. These proposals are studied below together with the arguments advanced in connexion with them. The arguments dealing with the problem of domestic jurisdiction without specific reference to the proposals are summarized in section II, B, of this study and will not be repeated here.

Proposal on competence submitted before the adoption of the agenda

454. During the discussion on the adoption of the agenda at the seventh session of the General Assembly a Member State moved that, having regard to Article 2 (7), the Assembly was not competent to consider the item dealt with in case No. 11. The President ruled that under the rules of procedure of the General Assembly the proposal regarding competence had priority over the question of the inclusion or non-inclusion of the item in the agenda. 408/ The President's ruling was challenged on the grounds that the Assembly would be in a position to decide on the question of competence only after the item had been discussed; it was therefore necessary to include the item in the agenda before considering the motion on competence. 409/ The Assembly reversed 410/ the President's ruling and, without pronouncing itself on the question of competence, included the item in the agenda.

Proposal submitted after the adoption of the agenda and requesting priority for the discussion on competence

455. During the debates in the First Committee in case No. 2, a Member State which contended that the item under consideration fell essentially within its domestic jurisdiction submitted a motion requesting the Committee to decide upon the question of competence before discussing the substance of the item. The motion was rejected. (See above, paragraph 47. See also paragraph 50).

Other proposals on competence submitted after the adoption of the agenda

456. In case No. 2 a Member State moved, at the third session of the General Assembly, that the item under consideration was essentially within its domestic jurisdiction and outside the competence of the Assembly. At the end of the general debate and before the vote on the other proposals which had been submitted, the motion was put to the vote and rejected (see paragraphs 43 and 44). At the fifth session, another Member State which contended that the item under consideration did not fall essentially within domestic jurisdiction moved that the Ad Hoc Political Committee was competent to consider and to vote on all the draft resolutions submitted in connexion with the item. The motion was adopted (see paragraphs 48 and 49).

457. In case No. 6 it was moved, at the third and fourth sessions of the General Assembly, after a debate during which objections to United Nations action had been raised on the grounds of Article 2 (7), that the First Committee vote on the question whether it was competent to vote on the draft resolutions submitted to it. At both sessions the motion was adopted (see above paragraphs 94 and 98).

408/ Case No. 11: G A (VII), Plen., 381st mtg., para. 150.

409/ Case No. 11: G A (VII), Plen., 381st mtg., paras. 136, 141, 163 and 164.

410/ Case No. 11: G A (VII), Plen., 381st mtg., para. 150.

458. In case No. 11 a Member State which contended that the item under consideration fell essentially within its domestic jurisdiction moved, at the seventh and eighth sessions of the General Assembly, that the Ad Hoc Political Committee was not competent to consider the item and that the Assembly was not competent to adopt the draft resolutions recommended by the Committee. At both sessions the motions were put to the vote at the end of the general debate and before the other proposals which had been submitted. They were rejected (see paragraphs 176-179 and 200). At the eighth session, the same Member State submitted a draft resolution by which the Ad Hoc Political Committee would have declared that certain matters listed therein "to which the item /under consideration/ relates" were essentially within domestic jurisdiction. At the end of the general debate and before the vote on the other proposals which had been submitted, the Committee rejected the draft resolution (see paragraphs 195-198). Several of the representatives who commented on the draft resolution stated 411/ that they were opposed to it because the matters listed therein were not on the Committee's agenda; hence, the question whether those matters fell essentially within domestic jurisdiction was not relevant.

Proposal requesting the Security Council to adjourn the debate on a matter until the International Court of Justice had ruled on its own competence to deal with a related matter

459. In case No. 20 the Security Council included in its agenda a complaint submitted by a member of the Council claiming that a Member State had failed to comply with provisional measures indicated by the International Court of Justice in respect of a dispute to which that Member State was a party.

460. During the Council's debates, it was maintained that since the dispute fell essentially within domestic jurisdiction the Council was not competent to deal with the complaint. It was also pointed out that, in indicating provisional measures, the Court had expressly reserved the question of its competence to deal with the dispute. Hence, it was moved that the Council should adjourn the debate on the complaint until the Court had ruled on its own competence. In supporting the motion, a member expressed 412/ the view that though the jurisdictions of the Council and of the Court were not identical or even interdependent, the decision of the Court and the reasons on which it would be based might throw some light on the question of the Council's jurisdiction. Another member, however, criticized 413/ the motion on the grounds that it implied that the question of the Council's jurisdiction depended at least to a certain degree on a decision of another United Nations body.

Decision

461. The Council adopted the motion and adjourned the debate without taking a decision on the other proposals submitted in the case. The International Court of Justice subsequently ruled, on grounds not related to Article 2 (7), that it had no jurisdiction to deal with the dispute (see paragraphs 326, 327 and 338).

Proposals containing provisions reserving the question of competence

462. In case No. 17 where it was contended that Article 2 (7) debarred the Security Council from dealing with the item under consideration, a member submitted an amendment

411/ Case No. 11: G A (VIII), Ad Hoc Pol. Com., 32nd mtg., paras. 44-47; 37th mtg., para. 4; 42nd mtg., paras. 27, 30, 31, 33, 47 and 48.

412/ Case No. 20: S C, 6th yr., 565th mtg., paras. 27 and 28.

413/ Case No. 20: S C, 6th yr., 565th mtg., para. 63.

to a draft resolution recommending action in respect of the item. The amendment contained, *inter alia*, a provision stating that the Council would take that action "without in any way deciding the juridical question concerning.../its/ competence..." The amendment was adopted by a vote in parts, the provision quoted above being rejected, however (see paragraphs 280-284).

463. In case No. 20, where it was also contended that Article 2 (7) debarred the Security Council from dealing with the item under consideration, a member submitted a draft resolution by which the Council would have recommended action in respect of the item "without deciding on the question of its own competence". The draft resolution was not put to the vote since a motion to adjourn the debate was adopted (see paragraphs 324 to 327).

Proposals requesting the International Court of Justice to give an advisory opinion on the question of competence

464. In case No. 2 an amendment to a draft resolution before the General Assembly requested the International Court of Justice to give an advisory opinion on the question whether the matters under consideration fell essentially within that State's domestic jurisdiction. In case No. 17 a member of the Security Council submitted a draft resolution requesting the International Court of Justice to give an advisory opinion on whether the Council was competent under Article 2 (7) to deal with the question under consideration. Contending that the question of competence was a previous question, that member moved that the draft resolution be given priority over all other proposals submitted to the Council.

465. The following contentions were submitted in favour of the proposals to request an advisory opinion.

466. In case No. 2 it was maintained that the question whether a particular matter was within the domestic jurisdiction of a State should not be decided by the interested party, nor by a political body, 414/ but should be referred to the Court for an authoritative exposition of the law and a judicial application of the law to the facts. 415/ It was maintained that juridical solutions would have more weight than a decision taken on political grounds, and reference to the Court would further the rule of law which the United Nations was seeking to establish. 416/ Some representatives favouring reference to the Court suggested that the question be phrased broadly so that the Court would not be required to give a narrow interpretation. 417/ It was also noted that when an advisory opinion was delivered, the question would be returned to the General Assembly which could then seek to find a solution with reference both to the legal and the political aspects. 418/

467. In case No. 17 it was argued that if the Security Council exceeded its competence it would undermine the authority which it must possess. 419/ To make sure that it did not exceed its competence, it should request the International Court of Justice to give an authoritative interpretation of Article 2 (7). In so doing the

414/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 3rd mtg., p. 31.

415/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 2nd mtg., p. 11.

416/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 2nd mtg., pp. 14 and 15; 4th mtg., pp. 32 and 36.

417/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 4th mtg., p. 35.

418/ Case No. 2: G A (I/2), Joint 1st and 6th Com., 4th mtg., p. 35.

419/ Case No. 17: S C, 2nd yr., No. 84, 195th mtg., pp. 2214 and 2215.

Council would demonstrate its desire to be impartial and to act in strict accordance with the provisions of the Charter. ^{420/} It was also maintained ^{421/} that an advisory opinion rendered by the Court would help to build a body of rules and standards which would enable the Council in future to judge whether it had competence in a given matter. ^{422/}

468. The following arguments were submitted against the proposals to request an advisory opinion.

469. In case No. 2 it was maintained that the question whether a matter was essentially within the domestic jurisdiction of a State was one for the General Assembly to decide and not for the Court. ^{423/} The political aspects far outweighed the legal aspects and to treat the question as a legal matter would be to minimize the political importance and prestige of the United Nations. ^{424/} It was said, in particular, that the proposal to request an advisory opinion did not take sufficient account of the political issue of the deterioration of relations between the countries involved. ^{425/} It was also suggested that a juridical interpretation of Article 2 (7) might give too much weight to the restriction on competence of the United Nations, particularly in respect of human rights and fundamental freedoms. ^{426/}

470. In case No. 17 it was recalled that the San Francisco Conference had rejected a proposal ^{427/} that the question whether Article 2 (7) applied to a particular matter be referred to the International Court of Justice. Hence, Article 2 (7) should be interpreted in the same manner as the other provisions of the Charter, that is, by the organ concerned and without reference to the Court. ^{428/} It was also argued that, though advisory opinions were not legally binding, it would be difficult, from the moral point of view, for the Council to set aside an advisory opinion rendered by the Court at the Council's request. In requesting an opinion the Council would therefore lose much of its freedom of action. ^{429/} Finally, some representatives held that the Council should not consult the Court on the question of competence since political as well as legal considerations were involved. ^{430/} Others contended that the question of competence was not a legal but a political question upon which only the Council could decide. ^{431/}

Decisions

471. The motion on priority and the amendment and the draft resolution requesting advisory opinions were rejected (see paragraphs 46 and 287-289).

^{420/} Case No. 17: S C, 2nd yr., No. 83, 194th mtg., p. 2194.

^{421/} Case No. 17: S C, 2nd yr., No. 84, 195th mtg., pp. 2218 and 2219.

^{422/} Case No. 17. It was further argued (S C, 2nd yr., No. 83, 194th mtg., p. 2194) that the adoption of a draft resolution requesting an advisory opinion on the question of competence would not prevent the Council from tendering its good offices to the parties since such an offer would not prejudice the question of competence (see para. 383).

^{423/} Case No. 2: G A (I/2), Joint 1st and 5th Com., 4th mtg., p. 37.

^{424/} Case No. 2: G A (I/2), Joint 1st and 6th Com., 3rd mtg., p. 29.

^{425/} Case No. 2: G A (I/2), Joint 1st and 6th Com., 2nd mtg., pp. 16 and 17.

^{426/} Case No. 2: G A (I/2), Joint 1st and 6th Com., 3rd mtg., p. 23.

^{427/} Documents of the United Nations Conference on International Organization, vol. 6, pp. 509 and 510, doc. 1019, I/1/42.

^{428/} Case No. 17: S C, 2nd yr., No. 84, 195th mtg., p. 2216.

^{429/} *Ibid.*, p. 2217.

^{430/} *Ibid.*, pp. 2215, 2216 and 2220.

^{431/} *Ibid.*, p. 2222.

ANNEX

Resolutions adopted over objections raised on the grounds of
Article 2 (7) in cases not dealt with in the present study

The following table lists resolutions adopted over objections raised on the grounds of Article 2 (7) in cases which are not dealt with in the General Survey and in the Analytical Summary of Practice since the objections did not lead to an exchange of views on the domestic jurisdiction clause (see Introductory Note, paragraph 2). The table indicates the numbers and the titles of the resolutions and the organs which adopted them. For each resolution a footnote refers to the Official Records in which the objections raised on the grounds of Article 2 (7) may be found.

Organ	Resolution number <u>a/</u>	Title of resolution
General Assembly	415 (V) <u>b/</u>	Transfer of functions of the International Penal and Penitentiary Commission
General Assembly	429 (V) <u>c/</u>	Draft Convention relating to the Status of Refugees
General Assembly	629 (VII) <u>d/</u>	Draft protocol relating to the status of stateless persons
General Assembly	687 (VII) <u>e/</u>	International criminal jurisdiction
General Assembly	733 (VIII) <u>f/</u>	Studies on internal migration
Economic and Social Council	116 D (VI) <u>g/</u>	Stateless persons

- a/ The roman figure between brackets indicates the session at which the resolution was adopted.
- b/ For the objections raised on the grounds of Article 2 (7), see G A (V), Plen., vol. I, 314th mtg., para. 117.
- c/ For the objections raised on the grounds of Article 2 (7), see G A (V), 3rd Com., 329th mtg., para. 26.
- d/ For the objections raised on the grounds of Article 2 (7), see G A (VII), 3rd Com., 421st mtg., para. 4.
- e/ For the objections raised on the grounds of Article 2 (7), see G A (VII), 6th Com., 324th mtg., para. 1; 327th mtg., paras. 41 and 46.
- f/ For the objections raised on the grounds of Article 2 (7), see G A (VIII), 3rd Com., 511th mtg., para. 19.
- g/ For the objections raised on the grounds of Article 2 (7), see E S C (VI), Plen., 159th mtg., p. 310.

Organ <u>a/</u>	Resolution number	Title of resolution
Economic and Social Council	147 G (VII) <u>h/</u>	Report of second session of the Transport and Communications Commission <u>1/</u>
Economic and Social Council	155 C (VII) <u>j/</u>	Prevention of crime and treatment of offenders
Economic and Social Council	222 A (IX) <u>k/</u> annex I	Observations on and guiding principles of an expanded programme of technical assistance for economic development
Economic and Social Council	222 D (IX) <u>l/</u>	Methods of financing economic development of under-developed countries
Economic and Social Council	227 F (IX) <u>m/</u>	Passport and frontier formalities
Economic and Social Council	248 B (IX) <u>n/</u>	Study of statelessness
Economic and Social Council	346 (XII) <u>o/</u>	International co-operation on water control and utilization
Economic and Social Council	379 B (XIII) <u>p/</u>	Licensing of motor-vehicle drivers
Economic and Social Council	379 D (XIII) <u>q/</u>	Customs formalities for international road transport and touring

- h/ For the objections raised on the grounds of Article 2 (7), see E S C (VII), Plen., 223rd mtg., p. 794.
- 1/ E S C resolution 147 G (VII) is concerned with the question of passport and frontier formalities.
- j/ For the objections raised on the grounds of Article 2 (7), see E S C (VII), Plen., 198th mtg., p. 377; E/AC.7/SR.50, p. 14; E/CN.5/SR.97, pp. 4 and 5.
- k/ For the objections raised on the grounds of Article 2 (7), see E S C (IX), Plen., 343rd mtg., pp. 921, 922 and 926.
- l/ For the objections raised on the grounds of Article 2 (7), see E S C (IX), Plen., 340th mtg., p. 858.
- m/ For the objections raised on the grounds of Article 2 (7), see E S C (IX), Plen., 337th mtg., p. 821.
- n/ For the objections raised on the grounds of Article 2 (7), see E S C (IX), Plen., 327th mtg., p. 641.
- o/ For the objections raised on the grounds of Article 2 (7); see E S C (XII), Plen., 464th mtg., para. 61.
- p/ For the objections raised on the grounds of Article 2 (7), see E/AC.6/SR.118, p. 6.
- q/ For the objections raised on the grounds of Article 2 (7), see E/AC.6/SR.118, p.13.

Organ	Resolution number <u>a</u>	Title of resolution
Economic and Social Council	379 G (XIII) <u>r</u>	Discrimination in transport insurance
Economic and Social Council	434 G (XIV) <u>s</u>	Simplification of formalities and reduction of costs for migrants
Economic and Social Council	463 E (XV) <u>t</u>	Licensing of motor-vehicle drivers
Economic and Social Council	471 D (XV) <u>u</u>	Report of the Population Commission (seventh session) <u>v</u>
Economic and Social Council	523 (XVII) <u>w</u>	Allegations regarding infringements of trade union rights
Economic and Social Council	526 A (XVII) <u>x</u>	Draft Protocol relating to the Status of Stateless Persons

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- r/ For the objections raised on the grounds of Article 2 (7), see E/AC.6/SR.119, p. 6.
s/ For the objections raised on the grounds of Article 2 (7), see E S C (XIV), Plen., 659th mtg., para. 33.
t/ For the objections raised on the grounds of Article 2 (7), see E S C (XV), Plen., 637th mtg., para. 94.
u/ For the objections raised on the grounds of Article 2 (7), see E S C (XV), Plen., 635th mtg., para. 47.
v/ E S C resolution 471 D (XV) is concerned with the question of internal migration.
w/ For the objections raised on the grounds of Article 2 (7), see E S C (XVII), Plen., 788th mtg., para. 21.
x/ For the objections raised on the grounds of Article 2 (7), see E/AC.7/SR.269, p. 9.

Chapter II

MEMBERSHIP

ARTICLE 3

TEXT OF ARTICLE 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

NOTE

1. The provisions of Article 3 do not contemplate any action by organs of the United Nations and no questions concerning their application and interpretation have arisen in the practice of United Nations organs. The only instance in which there was incidental reference to a problem indirectly related to Article 3 arose in connexion with the admission of a new Member and is therefore examined under Article 4. 1/

2. The following States were the original signatories of the Declaration by United Nations of 1 January 1942:

Australia
Belgium
Canada
China
Costa Rica
Cuba
Czechoslovakia
Dominican Republic
El Salvador
Greece
Guatemala
Haiti
Honduras
India

Luxembourg
Netherlands
New Zealand
Nicaragua
Norway
Panama
Poland
Union of South Africa
Union of Soviet Socialist Republics
United Kingdom of Great Britain and
Northern Ireland
United States of America
Yugoslavia

1/ See also in this Repertory under Article 4.

3. The following States subsequently adhered to the Declaration:

Bolivia	27 Apr. 1943	Liberia	26 Feb. 1944
Brazil	8 Feb. 1943	Mexico	5 June 1942
Chile	12 Feb. 1945	Paraguay	12 Feb. 1945
Colombia	22 Dec. 1943	Peru	11 Feb. 1945
Ecuador	7 Feb. 1945	Philippines	10 June 1942
Egypt	27 Feb. 1945	Saudi Arabia	1 Mar. 1945
Ethiopia	28 June 1942	Syria	1 Mar. 1945
France	26 Dec. 1944	Turkey	24 Feb. 1945
Iran	10 Sept. 1943	Uruguay	23 Feb. 1945
Iraq	16 Jan. 1943	Venezuela	16 Feb. 1945
Lebanon	1 Mar. 1945		

4. The following fifty States participated in the United Nations Conference on International Organization:

Argentina <u>2/</u>	Iran
Australia	Iraq
Belgium	Lebanon
Bolivia	Liberia
Brazil	Luxembourg
Byelorussian Soviet Socialist Republic <u>2/</u>	Mexico
Canada	Netherlands
Chile	New Zealand
China	Nicaragua
Colombia	Norway
Costa Rica	Panama
Cuba	Paraguay
Czechoslovakia	Peru
Denmark <u>2/</u>	Philippines
Dominican Republic	Saudi Arabia
Ecuador	Syria
Egypt	Turkey
El Salvador	Ukrainian Soviet Socialist Republic <u>2/</u>
Ethiopia	Union of South Africa
France	Union of Soviet Socialist Republics
Greece	United Kingdom of Great Britain and Northern Ireland
Guatemala	United States of America
Haiti	Uruguay
Honduras	Venezuela
India	Yugoslavia

5. The Charter was signed by the States listed above on 26 June 1945. Details of ratification may be found in the study on Article 110 in this Repertory. Poland, a signatory to the Declaration, did not participate in the Conference, 3/ but signed the Charter as an original Member on 15 October 1945.

2/ Invited to participate after the Conference had convened at San Francisco in April 1945.

3/ At the time the Conference was convened, agreement had not been reached on recognition of a Polish Government by the Governments of the Sponsoring Powers (China, USSR, United Kingdom and United States).

ARTICLE 4

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TEXT OF ARTICLE 4

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

INTRODUCTORY NOTE

1. For the purpose of the Repertory, the treatment of material under Article 4 presents certain problems which do not arise in connexion with most of the other Articles. These problems do not affect the material relating to the cases in which States have been admitted to membership; they result, however, from the fact that various applications for admission have been before the Organization for a number of years, during which time the Security Council has not submitted to the General Assembly recommendations for the admission of the applicants concerned. This fact has led to the discussion of the item "Admission of new Members" as such in both the Council and the Assembly. As a result, the practice of the two organs bearing upon Article 4 relates not only to the admission of individual applicants but also to questions of interpretation of the Charter and to questions of a political order which have arisen in connexion with the various applications still pending. Since the question of admission has thus developed over a period of several years, the chronological aspects of action taken by the Organization bearing upon Article 4 are of considerable importance for an appreciation of the factors involved in the question. The General Survey, therefore, provides a brief summary of these aspects. This summary is limited to an account of the main lines of the action taken, and is supplemented by the tabulation contained in the annex to the present study.

2. The General Survey also includes an indication of the range and various types of decisions taken and recommendations adopted by the General Assembly and the Security Council in connexion with the question of admission of new Members.

3. The questions involved in the various decisions of the two organs for the most part concern specific portions or phrases of Article 4 and are treated in the Analytical Summary of Practice under the relevant portions or phrases of that Article for the sake of clarity and convenience of presentation. Since Article 4 deals with only one subject, that of admission, the various questions, of course, constitute specific aspects of what from some points of view has, in fact, been a single question. For this reason, it has been necessary in a few cases to deal with material under one question and include cross-references to other questions to which that material is also relevant.

4. Some of the material is relevant to other Articles of the Charter as well. For instance, the question whether a new State created through the division of a Member State acquires membership in the Organization (see paragraphs 32-37 below) concerns Article 3 as well as Article 4; it has been included under Article 4. The material

concerning the respective functions of the Security Council and the General Assembly under Article 4 (2) (see paragraphs 70-85 below) has a bearing on Article 10 of the Charter under which an appropriate cross-reference will be found. Similarly, the practice under Article 4 (2) is relevant to that under Article 27 (3) (see paragraphs 86-91 below).

5. The Analytical Summary of Practice has been divided into two sections, covering respectively questions bearing upon Article 4 (1) and Article 4 (2). The order in which the various questions are arranged corresponds to the order of the portions of Article 4 to which they appear to be most closely related.

I. GENERAL SURVEY

A. Use of subsidiary organs

6. Various subsidiary organs have been established at one time or another by the Security Council and the General Assembly in connexion with the admission of new Members.

7. The Security Council at its 42nd meeting on 17 May 1946, adopted provisional rules of procedure concerning admission of new Members (present rules 58-60). Rule 59 provides that unless the Security Council decides otherwise, applications for admission shall be referred by the President to a committee of the Council (the Committee on the Admission of New Members) for examination and report. From 1946 to the end of 1949, the majority of applications were referred to the Committee prior to consideration by the Council. Since the beginning of 1950 applications have been considered directly by the Council without reference to the Committee. The General Assembly has not appointed any standing committee on admission of new Members, but it has, from time to time, set up ad hoc sub-committees to deal with questions involving applications for admission, and it has also established two temporary committees charged with various duties in this connexion. In 1946, at the second part of the first session of the General Assembly, a sub-committee of the First Committee was established to draft a text which would reconcile three different proposals submitted to the First Committee on the question of admission of new Members. In 1948, at the first part of the third session of the General Assembly, a sub-committee of the Ad Hoc Political Committee was set up to draft an agreed text concerning the application of Ceylon. In 1952, at its seventh session, the General Assembly established 1/ a Special Committee on Admission of New Members to make a detailed study of the question of the admission of States to membership in the United Nations. In 1953, at its eighth session, the General Assembly established 2/ a Committee of Good Offices to consult with members of the Security Council with the object of exploring the possibilities of reaching an understanding which would facilitate the admission of new Members in accordance with Article 4.

1/ G A resolution 620 A (VII).
2/ G A resolution 718 (VIII).

B. States admitted to membership and applications
which remain pending

8. The following States have so far been admitted to membership: 3/

Afghanistan	Yemen
Iceland	Burma
Sweden	Israel
Thailand (Siam)	Indonesia
Pakistan	

On each occasion admission to membership has been effected by decision of the General Assembly upon the recommendation of the Security Council.

9. The following applicants 4/ have so far failed to obtain the recommendation of the Security Council, and their applications remain pending: 5/

Albania	Finland
Mongolian People's Republic	Ceylon
Jordan	Republic of Korea
Portugal	Democratic People's Republic of Korea
Ireland	Nepal
Hungary	Viet-Nam
Italy	Libya
Austria	Democratic Republic of Viet-Nam
Romania	Cambodia
Bulgaria	Japan
	Laos

C. Action taken by the Security Council and by the General Assembly
concerning applications for admission of new Members

10. In 1946, the Security Council examined nine applications for membership. It recommended to the General Assembly the admission of Afghanistan, Iceland, Sweden and Thailand (Siam). The applications of Albania and the Mongolian People's Republic failed to obtain the necessary majority for a recommendation by the Council. The applications of Jordan (Transjordan), Portugal and Ireland failed to obtain the recommendation of the Council owing to the negative vote of a permanent member.

11. At the second part of its first session in 1946, the General Assembly decided to admit Afghanistan, Iceland, Sweden and Thailand (Siam) to membership in the United Nations. It also adopted a resolution 6/ recommending that the Council re-examine the

3/ Listed in the chronological order of admission; in cases where the General Assembly decided to admit more than one State on the same day the listing is alphabetical.

4/ Listed in the chronological order of reproduction of applications in document form.

5/ Of these twenty-one applicants, the following fourteen have failed to obtain a recommendation of the Council owing to the negative vote of a permanent member: Jordan, Portugal, Ireland, Italy, Austria, Finland, Ceylon, Republic of Korea, Nepal, Libya, Japan, Viet-Nam, Cambodia and Laos. The following seven have received less than 7 affirmative votes in the Council: Albania, Mongolian People's Republic, Hungary, Romania, Bulgaria, Democratic People's Republic of Korea (the application of the Democratic People's Republic of Korea has not been voted upon as such by the Council), Democratic Republic of Viet-Nam.

6/ G A resolution 35 (I).

applications of Albania, the Mongolian People's Republic, Jordan (Transjordan), Ireland and Portugal on their respective merits as measured by the yardstick of the Charter, in accordance with Article 4.

12. In 1947, the Security Council examined eight new applications for admission. The Council recommended to the General Assembly that Yemen and Pakistan be admitted. It also re-examined the five applications which had failed to obtain its recommendation in 1946. The results of the votes taken by the Council were as follows: the applications of Albania, the Mongolian People's Republic, Hungary, Romania and Bulgaria failed to obtain the required majority. The applications of Jordan (Transjordan), Portugal, Ireland, Italy, Austria and Finland failed to obtain the recommendation of the Council owing to the negative vote of a permanent member. During the discussion, the Council decided to vote separately on five applications which were listed in one draft resolution, and did not vote upon the draft resolution as such.

13. At its second session in 1947, the General Assembly decided to admit Pakistan and Yemen to membership. It also adopted eight resolutions ^{7/} by which it: (1) recommended that the permanent members of the Council consult with a view to reaching agreement on the admission to membership of the applicants which had not been recommended and submit their conclusions to the Council; (2) requested the International Court of Justice to give an advisory opinion on certain questions connected with the consent of a Member of the United Nations to the admission of a State; and (3) determined that Ireland, Portugal, Transjordan, Italy and Finland, whose admission, it considered, had been opposed on grounds not covered by Article 4, were peace-loving States within the meaning of that Article and should, therefore, be admitted to membership. The General Assembly also expressed the opinion that Austria was a peace-loving State within the meaning of Article 4. It requested the Council to reconsider the applications of the above-mentioned States in the light of the determination which it had made and in the light of the opinion expressed concerning Austria.

14. Towards the end of 1947 and during 1948, the Security Council reconsidered the applications. After taking a vote on one of these, the Council decided to report to the General Assembly that none of its members had changed its position with regard to the applications. Three new applications were examined by the Council in 1948. The Council decided to recommend that Burma be admitted to membership. The application of Ceylon failed to obtain the recommendation of the Council owing to the negative vote of a permanent member. The application of Israel failed to obtain the requisite majority in 1948.

15. At its second special session in 1948, the General Assembly decided to admit Burma to membership. At the first part of its third session in the same year, the Assembly adopted a series of nine resolutions concerning the admission of new Members. ^{8/} In the first resolution it recommended that each member of the Council and of the Assembly, in exercising its vote on the admission of new Members, should act in accordance with the advisory opinion of the International Court of Justice of 28 May 1948, according to which a Member State was not juridically entitled to make its consent to the admission of a State to membership dependent on conditions not expressly provided by Article 4 (1), and, in particular, could not subject its affirmative vote to the additional condition that other States be admitted together with that State. In the second resolution, having noted the advisory opinion of the Court and the general sentiment in favour of the universality of the United Nations, the Assembly asked the Council to reconsider, taking into account the circumstances of each particular case,

^{7/} G A resolutions 113 A-H (II).

^{8/} G A resolutions 197 A-I (III).

the various applications which the Council had failed to recommend. The next five resolutions reiterated the determination of the General Assembly that Portugal, Jordan (Transjordan), Italy, Finland and Ireland were qualified for admission and should be admitted and requested the Council to reconsider the applications in the light of the determination of the Assembly and of the advisory opinion of the Court. In the last two resolutions the Assembly also reiterated its favourable opinion concerning Austria and requested the Council to reconsider the application of that country in the light of that opinion and of the advisory opinion of the Court; it further requested the Council to reconsider at the earliest possible moment the application of Ceylon in the light of the discussions in the *Ad Hoc* Political Committee which had revealed a unanimous opinion that Ceylon was qualified for admission and should be admitted to membership.

16. In 1949, the Security Council recommended to the Assembly that Israel be admitted to membership. It also received applications for admission from the Republic of Korea, the Democratic People's Republic of Korea and Nepal, and reconsidered the various pending applications. The results of the votes taken were that the situation remained unchanged in so far as the various pending applications were concerned; the application of the Republic of Korea and Nepal failed to secure the recommendation of the Council owing to the negative vote of a permanent Member, and a proposal to refer the application of the Democratic People's Republic of Korea to the Committee on Admission of New Members was rejected. In the course of this discussion, the Council, after voting separately on each applicant listed, rejected a draft resolution recommending the admission of fourteen applicants.

17. The General Assembly, at the second part of its third session in 1949, decided to admit Israel to membership. At its fourth session in the same year, the General Assembly adopted a series of 11 resolutions concerning the admission of new Members. 9/ In the first nine of these, the Assembly reaffirmed its determination concerning Austria, Ceylon, Finland, Ireland, Italy, Jordan and Portugal; expressed its determination that the Republic of Korea and Nepal were qualified for admission and should be admitted, and requested the Council to reconsider those applications in the light of the determination of the Assembly. In the tenth resolution the Assembly requested the International Court of Justice to give an advisory opinion on whether the admission of a State to membership could be effected by a decision of the General Assembly when the Security Council had made no recommendation for admission. The last resolution requested the permanent members of the Council to refrain from the use of the veto in connexion with recommendations for admission and requested the Council to keep under consideration, in the light of Article 4 (1), the pending applications of all States which so far had not gained admission.

18. In 1950, the Security Council recommended to the General Assembly that Indonesia be admitted to membership.

19. At its fifth session in 1950, the General Assembly decided to admit Indonesia to membership. It also adopted a resolution 10/ recalling the resolutions adopted at the previous session (excepting the request for an advisory opinion by the Court) and requested the Council to keep the pending applications under consideration in accordance with those resolutions.

9/ G A resolutions 296 A-K (IV).

10/ G A resolution 495 (V).

20. At its sixth session in 1951-1952, the General Assembly adopted two resolutions, 11/ in the first of which it recommended that the Council, in reconsidering all pending applications for admission and in the consideration of all future applications, base its action exclusively on the conditions contained in the Charter and on the facts which States applicants might present establishing the existence of those conditions. This resolution also requested the permanent members of the Council to confer with one another soon with a view to assisting the Council to come to positive recommendations in regard to the pending applications for membership. In the second resolution the Assembly requested the Council to report to the Assembly at its seventh session on the status of applications still pending.

21. Earlier in the sixth session, the Assembly, on the basis of a report by its Fourth Committee, had adopted a resolution 12/ noting the fact that Italy had been charged by the United Nations with the administration of the Trust Territory of Somaliland and recommending that the Council give urgent consideration to the resolution of the Assembly with a view to recommending the immediate admission of Italy. 13/

22. By votes taken early in 1952, following discussion late in 1951, the Council failed to recommend the admission of Italy owing to the negative vote of a permanent member and rejected a draft resolution calling for simultaneous admission of fourteen applicants. The Council again rejected a similar draft resolution later in 1952. In the course of this later discussion applications submitted by Viet-Nam, Libya, Cambodia, Japan and Laos failed to obtain the recommendation of the Council owing to the negative vote of a permanent member. The application of the Democratic Republic of Viet-Nam failed to obtain the necessary majority.

23. At its seventh session in 1952, the General Assembly adopted a series of seven resolutions concerning the admission of new Members, 14/ the first of which established a Special Committee on Admission of New Members to make a detailed study of the question of admission. The remaining resolutions expressed the determination of the Assembly that Japan, Viet-Nam, Cambodia, Laos, Libya and Jordan were qualified for admission and should be admitted and requested the Council to take note of that determination.

24. The Security Council did not discuss the question of admission of new Members during the years 1953 and 1954.

25. At its eighth session in 1953, the General Assembly adopted a resolution 15/ establishing a Committee of Good Offices, empowered to consult with members of the Council with the object of exploring the possibilities of reaching an understanding which would facilitate the admission of new Members in accordance with Article 4.

11/ G A resolutions 506 A and B (VI).

12/ G A resolution 550 (VI).

13/ For material relating to the participation of Italy in the Trusteeship Council, see also in this Repertory under Article 86.

14/ G A resolutions 620 A-G (VII).

15/ G A resolution 718 (VIII).

II. ANALYTICAL SUMMARY OF PRACTICE

A. Questions bearing upon the provisions of Article 4 (1)

1. *The question of the universality of the Organization*

26. This question, which has been related to the words "Membership in the United Nations is open to all other ... states", is not simply one involving a choice between two alternative interpretations or applications of that portion of Article 4. It concerns, rather, its bearing upon the interpretation of the remainder of the Article. The term universality or, as it is sometimes phrased, "universal membership", as applied to the United Nations, has been used in most of the debates of the Security Council and the General Assembly on the question of admission of new Members. It has also appeared in draft resolutions and in the preambles to a number of General Assembly resolutions on this question.

a. PROPOSALS SUBMITTED TO THE SECURITY COUNCIL REFERRING
TO THE PRINCIPLE OF UNIVERSALITY

27. The first reference to universality of membership in connexion with a proposal submitted to one of the organs of the United Nations was made at the 54th meeting of the Security Council on 28 August 1946, by the representative of the United States, who proposed that the Council take broad and far-sighted action to extend the membership of the United Nations as far as was consistent with the provisions of Article 4 of the Charter. His delegation was prepared to overlook its misgivings concerning certain applicants for the sake of accelerating advancement of universality of membership and submitted a draft resolution under which the Council would recommend to the General Assembly the admission of all eight applicant States. ^{16/} This draft resolution was supported by a number of other members of the Security Council on the same grounds. At the same meeting the Secretary-General stated: ^{17/}

"the founding Members of the United Nations and all the great Powers which form part of our Organization have agreed, on numerous occasions, that the United Nations must be as universal as possible. This is one subject on which there has never been a serious difference of opinion. For this reason, in my capacity as Secretary-General of the United Nations, I wish to support the admission to membership of all the States which are applying today."

28. The United States draft resolution was opposed on several grounds, including, in particular, the view that the doctrine of universality did not relieve the Council of

^{16/} Afghanistan, Albania, Iceland, Ireland, Mongolian People's Republic, Portugal, Sweden and Transjordan (Jordan).

^{17/} S C, 1st yr., 2nd Series, No. 4, 54th mtg., p. 44. At the 186th meeting, on 18 August 1947, the Assistant Secretary-General in charge of Legal Affairs repeated the above quoted statement on the instructions of the Secretary-General (S C, 2nd yr., No. 78, 186th mtg., pp. 2032 and 2033). The Secretary-General has repeatedly expressed support for the concept of universal membership, in particular in several of his annual reports to the General Assembly and in his twenty-year programme for achieving peace through the United Nations.

the responsibility of considering each applicant separately on its merits. The draft resolution was subsequently withdrawn, 18/ its sponsor noting that it was clear that it would be opposed by a permanent member of the Council. 19/

b. PROPOSALS SUBMITTED TO THE GENERAL ASSEMBLY REFERRING
TO THE PRINCIPLE OF UNIVERSALITY

29. Reference has been made to the principle of universality in various proposals submitted to the General Assembly, usually in the preamble to draft resolutions. At the second session of the General Assembly in 1947, a draft resolution 20/ containing such a reference in the operative part was rejected by the First Committee.

30. During the discussion of the question of admission of new Members in 1948, the representative of Sweden submitted a draft resolution 21/ to the Ad Hoc Political Committee, proposing that the General Assembly ask the Security Council to reconsider, in the light of the principle of universality and taking into account the circumstances in each particular case, the applications for membership in the United Nations of the States mentioned in the special reports of the Council.

31. An amendment 22/ submitted by Bolivia proposed the deletion, in the operative part, of the words "in the light of the principle of universality and" and the addition of a third paragraph to the preamble noting "the general sentiment in favour of the universality of the United Nations". 23/

Decision

At the 14th meeting of the Ad Hoc Political Committee on 26 November 1948, the draft resolution submitted by Sweden, as amended by Bolivia, was adopted by 33 votes to 3 with 8 abstentions. This draft resolution was subsequently adopted by the General Assembly as resolution 197 B (III). 24/ The relevant portion of the resolution reads as follows:

"The General Assembly

"

"Having noted the general sentiment in favour of the universality of the United Nations,

"Asks the Security Council to reconsider, taking into account the circumstances in each particular case, the applications for membership in the United Nations of the States mentioned in the said special reports."

18/ For text of relevant statements, see S C, 1st yr., 2nd Series, No. 4, 54th and 55th mtgs., pp. 41-60.

19/ Similar proposals have at one time or another been submitted to the Council but have also been withdrawn without being put to a vote; for example, proposal by Mexico in 1946 (S C, 1st yr., 2nd Series, No. 5, 57th mtg., pp. 114-124); proposal by Syria in 1946 (S C, 2nd yr., Special Suppl. No. 3, p. 28).

20/ G A (II), 1st Com., p. 579, annex 14 a (A/C.1/183).

21/ G A (III/1), Ad Hoc Pol. Com., Annexes, p. 9, A/AC.24/17.

22/ G A (III/1), Ad Hoc Pol. Com., Annexes, p. 10, A/AC.24/18.

23/ For text of relevant statements, see G A (III/1), Ad Hoc Pol. Com., 9th-14th mtgs.

24/ In the other two resolutions of the General Assembly (506 (VI) and 718 (VIII)) in which reference is made to the concept of universality, the preambles, in which these references are contained, state that universality is subject only to the conditions set forth in Article 4.

*2. The question whether a new State created through the division
of a Member State of the United Nations, acquires
membership in the Organization*

32. This question was raised as a result of a cablegram 25/ dated 15 August 1947, addressed to the Secretary-General by the Minister for Foreign Affairs of Pakistan. The latter stated that in the view of his Government both the Dominions of India and Pakistan should become Members of the United Nations, automatically, with effect from 15 August 1947. If, however, that view was not accepted, he applied for the admission of Pakistan as a Member. The Security Council, on 18 August 1947, decided 26/ to consider the application directly, without reference to its Committee on Admission of New Members, and decided unanimously to recommend the admission of Pakistan. After the decision to recommend admission had been taken, it was emphasized by a representative 27/ that the vote could not be taken as a precedent for omitting consideration of the matter by the Committee on the Admission of New Members. It was not clear whether Pakistan had been born out of India or whether two new States had come into being. He declared that, in the future, should another State split up into several States and all of them ask for automatic admission, the precedent could not be cited as a justification for depriving the Council of the privilege of making recommendations on admission.

33. The recommendation 28/ of the Council was referred to the First Committee at the second regular session of the General Assembly. During the discussion 29/ in the Committee the representative of Argentina held 30/ that Pakistan was already a Member, since with India it had inherited the original membership held by the previous Indian Government. Had the United Nations decided that India and Pakistan were new States, and that, therefore, both Governments should submit applications, he would have had no objection. He submitted a draft resolution 31/ by which the Assembly would declare the Dominion of Pakistan a Member as from 15 August 1947, it being understood that the positions occupied by the representatives of India in United Nations bodies up to 15 August 1947 would be occupied from that date by the representatives of the Dominion of India. A number of representatives agreed that it would be advisable to clarify the legal aspects of the matter for the future but urged that the admission of Pakistan not be delayed. The Committee then approved a draft resolution submitted by Australia to admit Pakistan. Prior to the decision, the representative of Australia had accepted an amendment to that draft resolution by which the legal problem raised by the representative of Argentina would be referred to the Sixth Committee for consideration and report.

Decision

After the adoption of the draft resolution submitted by Australia, it was decided, by 35 votes to none, on the motion of the representative of Australia "that the legal problem raised by the representative of Argentina be referred to the Legal Committee for consideration and report".

25/ S C, 2nd yr., No. 78, 186th mtg., pp. 2027 and 2028, S/498.

26/ Ibid., p. 2030.

27/ Ibid., p. 2055.

28/ S C resolution of 21 August 1947; transmitted to the General Assembly by document A/350, G A (II), 1st Com., p. 529, annex 1.

29/ G A (II), 1st Com., 59th mtg., pp. 3-8.

30/ Ibid., p. 3.

31/ G A (II), 1st Com., p. 582, annex 14 e (A/C.1/187).

34. When the General Assembly considered 32/ the report 33/ of the First Committee, on 30 September 1947, the Rapporteur of the Committee explained that the Committee had agreed that the opinion to be submitted by the Sixth Committee would have no bearing whatever on the First Committee's recommendation concerning Pakistan and was for future reference only. The General Assembly then decided to admit Pakistan to membership.

35. The question 34/ put to the Sixth Committee by the First Committee read as follows: "What are the legal rules to which, in the future, a State or States entering into international life through the division of a Member State of the United Nations should be subject?"

36. On 11 October 1947, the Sixth Committee submitted a report 35/ which included the following principles agreed upon by its members:

"1. That, as a general rule, it is in conformity with legal principles to presume that a State which is a Member of the Organization of the United Nations does not cease to be a Member simply because its Constitution or its frontier have been subjected to changes, and that the extinction of the State as a legal personality recognized in the international order must be shown before its rights and obligations can be considered thereby to have ceased to exist.

"2. That when a new State is created, whatever may be the territory and the populations which it comprises and whether or not they formed part of a State Member of the United Nations, it cannot under the system of the Charter claim the status of a Member of the United Nations unless it has been formally admitted as such in conformity with the provisions of the Charter.

"3. Beyond that, each case must be judged according to its merits."

37. The report further stated that:

"It was agreed by the Sixth Committee that these principles are to be transmitted to the First Committee as suitable to give general guidance to the United Nations in connexion with future cases, with the understanding that each case will be considered in accordance with its particular circumstances."

3. The question of the manner in which applicant States are to indicate their acceptance of the obligations contained in the Charter

38. The rules of procedure of the Security Council and the General Assembly prescribe what is to be done by applicant States to indicate their acceptance of the obligations contained in the Charter. The rules of the Security Council and the General Assembly with regard to this matter have varied. Under the original rules 36/ the applicant State signified its readiness to accept the obligations of the Charter in a declaration

32/ G A (II), Plén., vol. I, 92nd mtg., pp. 311-320.

33/ G A (II), Plén., vol. II, pp. 1450 and 1451, annex 3 (A/399).

34/ Letter of the President of the General Assembly dated 26 September 1947, transmitted by document A/C.6/145, G A (II), 6th Com., pp. 304 and 305, annex 6.

35/ Letter of the Chairman of the Sixth Committee, transmitted by document A/C.1/212, G A (II), 1st Com., pp. 582 and 583, annex 14 g.

36/ Rules 104 and 107 of the provisional rules of procedure of the General Assembly (A/4) and rule 58 of the provisional rules of procedure of the Security Council (S/96). These rules remained in effect until 21 November 1947 in the case of the General Assembly and 9 December 1947 in the case of the Security Council.

which it was required to submit to the Secretary-General with its application, but the acceptance itself occurred and membership became effective only with the deposit of an instrument of adherence to the Charter after the approval of the application by the General Assembly. Under the present rules, acceptance of the obligations of the Charter takes place when the application for membership is submitted and membership becomes effective when the application is approved by the General Assembly.

a. THE INSTRUMENT OF ADHERENCE - THE PRACTICE UNDER
THE FORMER RULES OF PROCEDURE

39. Six States, namely, Afghanistan, Iceland, Sweden, Thailand (Siam), Pakistan and Yemen became Members of the United Nations under the former rules. 37/ The text of the instruments of adherence submitted by Iceland and Thailand (Siam) reads, for example, as follows: 38/

"The Government of having received from the Secretary-General of the United Nations the information that the General Assembly of the United Nations has approved the application for membership of ... hereby presents to the Secretary-General of the United Nations this instrument of adherence, in accordance with rule 116 of the provisional rules of procedure for the General Assembly.

"The Government of ... hereby states that it accepts the obligations contained in the Charter of the United Nations.

(Signed)"

b. THE FORMAL INSTRUMENT OF ACCEPTANCE - PRACTICE UNDER
THE PRESENT RULES OF PROCEDURE

40. Some dissatisfaction with the original rules had been expressed 39/ in the course of the first consideration of applications by the Security Council in 1946. The matter was formally raised 40/ in the Committee of Experts of the Security Council in 1947, when that body was considering the report of a sub-committee concerning joint meetings held with the Committee on procedure for the admission of new members, a committee of the General Assembly, to discuss the respective rules of procedure of the two organs on the admission of new Members. It was pointed out that whereas, according to the Charter, an applicant became a Member upon the decision of the General Assembly, the rules of procedure, as they stood, required that thereafter the applicant submit an instrument of adherence to the Charter. The Committee of Experts accordingly recommended to the Security Council the adoption of the present rule 58 of the provisional rules of procedure. The Committee of the General Assembly subsequently submitted a report 41/ to the General Assembly recommending the adoption of the same text, which is now

37/ The General Assembly decided on 9 November 1946, to admit Afghanistan, Iceland and Sweden. Afghanistan and Iceland submitted instruments of adherence on 19 November 1946. Sweden submitted an instrument of adherence on 16 November 1946. The General Assembly decided on 15 December 1946 to admit Thailand (Siam) and a formal instrument of adherence was submitted on 16 December 1946. The General Assembly decided on 30 September 1947 to admit Pakistan and Yemen and these two States submitted instruments of adherence on the same date.

38/ United Nations Treaty Series, vol. I, 1946-1947, I, Nos. 8, 9 and 11.

39/ See, for example, S C, 1st yr., 2nd Series, 54th mtg., pp. 53 and 54.

40/ S C, 2nd yr., Suppl. 19, pp. 157-164, annex 44, S/520.

41/ G A (II), 1st Com., pp. 546-554, annex 7 (A/384).

rule 135 of its rules of procedure. The new rules were adopted by the Security Council and the General Assembly on 9 December 1947 and on 21 November 1947 respectively.

41. Burma was the first State to be admitted under the new rules, followed by Israel and Indonesia. Burma submitted the following instrument of acceptance ^{42/} to the Secretary-General on 19 March 1948:

"In the name of Burma, being duly authorized by virtue of the full powers vested in me by the Minister of Foreign Affairs of the Government of the Union of Burma, I declare that Burma hereby accepts without any reservation the obligations of the Charter of the United Nations and promises to keep them inviolably from the day when it becomes a member of the United Nations.

(Signed) U So Nyun
Ambassador E. & P.
of the Union of Burma"

*4. The question of the respective roles of the Security Council
and the General Assembly regarding the judgement to be
made by the Organization*

42. Article 4 (1) provides that membership in the United Nations is open to applicants which, "in the judgment of the Organization" meet the conditions set forth in that paragraph. The question as to the respective roles which the Security Council and the General Assembly are to play in making this judgement, is closely connected with questions arising under Article 4 (2), which are dealt with below. ^{43/} Under the present heading it is sufficient to say that the practice of the Security Council and that of the General Assembly in this respect, as evidenced by their respective rules of procedure, appears to be that the term "judgment of the Organization" as to whether an applicant satisfies the conditions set forth in Article 4 (1) refers to the judgement of both organs. This evidence provided by the rules of procedure is supported by the terms that have been used in draft resolutions, recommendations, resolutions and decisions. The International Court of Justice has also stated, in the advisory opinion it delivered in response to the request ^{44/} contained in the resolution of the General Assembly 113 B (II), that "the judgment of the Organization means the judgment of the two organs mentioned in paragraph 2 of Article 4". ^{45/}

43. The text of the relevant portions of the rules of the two organs is as follows:

In rule 60 ^{46/} of the provisional rules of procedure of the Security Council it is stated that:

"The Security Council shall decide whether in its judgement the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and accordingly whether to recommend the applicant State for membership."

^{42/} United Nations Treaty Series, vol. 15, 1948, I, No. 225, p. 4.

^{43/} In particular, see paras. 70 and 71 below.

^{44/} See para. 57 below.

^{45/} Admission of a State to the United Nations, I C J, Reports 1948, p. 62.

^{46/} This portion of rule 60 has remained unaltered since the Council adopted it on 17 May 1946. Rule 26 of the provisional rules of the Council submitted by the Preparatory Commission was similar in substance to this portion of rule 60.

Rule 137 47/ of the rules of procedure of the General Assembly states:

"If the Security Council recommends the applicant State for membership the General Assembly shall consider whether the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and shall decide, by a two-thirds majority of the Members present and voting, upon its application for membership."

44. Although only one 48/ of the six 49/ recommendations made by the Security Council for admission of new Members referred specifically to the judgement of the Council that the applicant was qualified under Article 4, the majority of draft resolutions concerning admission submitted to the Council since 1948 have contained such a specific reference, and no objection has ever been made to the reference from a constitutional point of view. 50/ Decisions of the General Assembly have normally included a statement to the effect that the State in question fulfilled the conditions of Article 4. 51/ Many Assembly resolutions recommending that the Council reconsider applicants have contained a determination that a given applicant was, in the Assembly's judgment, qualified for admission. 52/

5. *The question of the meaning to be attached to the terms
"peace-loving States ... able and willing to carry out
[the] obligations [contained in the Charter]"*

45. Many references have been made by individual representatives and delegations, at one time or another, to the meaning to be attached to the following terms of Article 4 (1): "peace-loving states ... able and willing to carry out /the/ obligations /contained in the Charter/". However, although there have been statements of position in respect of specific interpretations of these terms, there has never been any attempt, in proposals submitted to the Council or the Assembly, to define their meaning in any general sense. Reference to this particular passage of Article 4 (1), has nevertheless been made in General Assembly resolutions 53/ recommending reconsideration of applicants by the Council, and in Security Council recommendations for the admission of

47/ This rule has remained unaltered since it was originally submitted by the Preparatory Commission as rule 106 of the provisional rules of procedure of the Assembly.

48/ S C resolution of 4 March 1949, concerning the admission of Israel, transmitted by document A/E18, G A (III/2), Plen., Annexes, pp. 30 and 31. The resolution of 26 September 1950, concerning Indonesia, transmitted by document A/1402, G A (V), Annexes, a.s. 19, p. 3, is similar, but does not use the word "judgement".

49/ The first and third recommendations (S C resolution of 29 August 1946, transmitted by document A/108, and S C resolution of 21 August 1947, transmitted by document A/350, G A (II), 1st Com., p. 529, annex 1) listed more than one applicant State, the Council having previously taken separate votes on the applications in question.

50/ See, for example, S C, 4th yr., Suppl. for June, pp. 11-14, S/1331-S/1337; S C, 7th yr., Suppl. for Jan., Feb. and March, p. 13, S/2483; S C, 7th yr., Suppl. for July, Aug. and Sept., pp. 26 and 29, S/2754, S/2758-S/2760.

51/ For example, G A resolutions 108 (II) and 273 (III). This has not always been the case - G A resolution 491 (V) on Indonesia, for example, does not contain such a reference.

52/ For example, G A resolutions 197 C-G (III).

53/ See, for instance, the second paragraph of the preamble of G A resolution 506 A (VI), specifying the kinds of facts to be taken into account.

individual applicant States. The Assembly has determined in various cases that an applicant possessed the qualifications specified in Article 4 (1); in one instance (see paragraphs 49 et seqg.), it has endorsed a statement that the existing Government of a non-member State did not possess the necessary qualifications to justify its admission to the Organization.

a. DECLARATIONS BY THE GENERAL ASSEMBLY

46. In a number of cases, the General Assembly has declared 54/ that it determined specific applicant States to be, in its judgement, peace-loving States within the meaning of Article 4, able and willing to carry out the obligations of the Charter, and has requested the Council to reconsider such applications, in the light of the determination of the Assembly.

47. For example, at the fourth session of the General Assembly in 1949, nine draft resolutions 55/ were submitted to the Ad Hoc Political Committee by Australia. They reaffirmed 56/ the determination of the General Assembly that Austria, Finland, Ireland, Italy, Jordan and Portugal, were, in its judgement, peace-loving States within the meaning of Article 4, were able and willing to carry out the obligations of the Charter, and should be admitted to membership and made the same determination with respect to Ceylon, the Republic of Korea and Nepal. The Assembly was to request the Council to reconsider the applications of these countries in the light of this determination. These draft resolutions were approved by the Committee, although they were opposed by some of its members on the grounds that to single out certain applicants constituted discrimination against others equally qualified for admission. 57/

Decisions

At its 252nd plenary meeting on 22 November 1949, the General Assembly adopted resolution 296 A (IV) (relating to the application of Austria) by 51 votes to 5, with 2 abstentions.

Resolutions 296 B-I (IV) (relating respectively to the applications of Ceylon, Finland, Ireland, Italy, Jordan, the Republic of Korea, Portugal and Nepal) were also adopted.

The relevant portion of resolution 296 A (IV) reads as follows:

"The General Assembly,

".....

"1. Reaffirms its determination that Austria is, in its judgment, a peace-loving State within the meaning of Article 4 of the Charter, is able and willing to carry out the obligations of the Charter, and should therefore be admitted to membership in the United Nations;

"2. Requests the Security Council to reconsider the application of Austria, in the light of this determination of the General Assembly."

54/ G A resolutions 113 C-G (II), 197 C-G (III), 296 A-I (IV) and 620 B-G (VII).

55/ G A (IV), Plen., Annex, pp. 30-34, A/1066, paras. 11 (a) and 12 A-I.

56/ The original determination had been made in G A resolutions 113 C-H (II) and 197 C-G (III).

57/ For texts of relevant statements, see G A (IV), Ad Hoc Pol. Com., 25th-29th mtgs.

b. DRAFT RESOLUTIONS SUBMITTED TO, AND RECOMMENDATIONS
MADE BY, THE SECURITY COUNCIL

48. Draft resolutions 58/ submitted to the Security Council providing that the Council recommend to the General Assembly that a given applicant be admitted to membership have formally referred to the applicant in question as being a peace-loving State, able and willing to carry out the obligations contained in the Charter or as fulfilling the requirements of Article 4. However, such references have not always been included in the text of the various recommendations made by the Council. The recommendations submitted to the Assembly concerning Israel 59/ and Indonesia 60/ are the only two which have contained specific references to the language of Article 4. 61/ The latter is given as an example:

"The Security Council finds that the Republic of Indonesia is a peace-loving State which fulfils the conditions laid down in Article 4 of the Charter, and therefore recommends to the General Assembly that the Republic of Indonesia be admitted to membership of the United Nations."

c. GENERAL ASSEMBLY RESOLUTIONS CONCERNING RELATIONS OF
MEMBERS OF THE UNITED NATIONS WITH SPAIN

49. At the first part of the first session of the General Assembly in 1946, the delegation of Panama requested inclusion in the agenda of the Assembly of the item entitled "Relations of Members of the United Nations with Spain" and submitted a draft resolution on this item. On the recommendation of the General Committee, the General Assembly considered the item and the draft resolution in plenary meetings without reference to a committee. The draft resolution 62/ recalled the agreement at the San Francisco Conference that so long as régimes installed with the help of armed forces of countries which had fought against the United Nations were in power in certain States, Article 4 (2) could not be applied to the latter; it also recalled the Potsdam Conference statement that the existing Spanish Government did not possess the necessary qualifications to justify its admission to the United Nations. The General Assembly, in endorsing those two statements, was to recommend that the Members of the United Nations should take into account the letter and spirit of the statements in the conduct of their future relations with Spain.

58/ Cf. footnote 46. See also S C, 7th yr., Suppl. for July, Aug. and Sept., p. 48, S/2773.

59/ S C resolution of 4 March 1949, transmitted by document A/818, G A (III/2), Plen., Annexes, pp. 30 and 31.

60/ S C resolution of 26 September 1950, transmitted by document A/1402, G A (V), Annexes, a.i. 19, p. 3.

61/ The other recommendations (S C resolutions of 29 August 1946, 12 December 1946, 21 August 1947 and 10 April 1948, transmitted by documents A/108, A/256, G A (II), 1st Com., p. 529, annex 1 (A/350); G A (S-II), Annex, p. 3, A/533 respectively) have included references to statements made by members of the Council, to unanimous approval of the application or applications in question, and to the report of the Council's Committee on Admission of New Members.

62/ G A (I/1), Plen., pp. 584 and 585, annex 9 (A/40).

50. During the discussion 63/ of the matter by the General Assembly, the representative of Norway submitted an amendment 64/ to the draft resolution of Panama replacing the words "take into account" by the words "act in accordance with". 65/

Decision

At the 26th meeting of the General Assembly on 9 February 1946 the amendment submitted by Norway was adopted by 35 votes to 3, with 1 abstention. The draft resolution, as amended, was then adopted by 46 votes to none, with 2 abstentions. The relevant portion of the resolution (which became resolution 32 (I)) reads as follows:

"1. The General Assembly recalls that the San Francisco Conference adopted a resolution according to which paragraph 2 of Article 4 of chapter II of the United Nations Charter 'cannot apply to States whose regimes have been installed with the help of armed forces of countries which have fought against the United Nations so long as these regimes are in power.'

"2. The General Assembly recalls that at the Potsdam Conference the Governments of the United Kingdom, the United States of America and the Soviet Union stated that they would not support a request for admission to the United Nations of the present Spanish Government 'which, having been founded with the support of the Axis powers, in view of its origins, its nature, its record and its close association with the aggressor States, does not possess the necessary qualifications to justify its admission.'

"3. The General Assembly, in endorsing these two statements,".

51. At the second part of its first session, the General Assembly adopted a further resolution 66/ on relations of Members of the United Nations with Spain in which it reaffirmed the position taken in the above-quoted resolution. 67/

6. The question of the submission of information or evidence by applicants in connexion with the requirements of Article 4 (1)

52. While there is no provision in Article 4 covering this question, it has arisen in the practice of the Council and of its Committee on the Admission of New Members, and in the practice of the General Assembly. The latter has adopted a resolution 68/ recommending that, in considering or reconsidering applications, the members of the Security Council take into account such facts and evidence as applicants might present and that the Council base its action exclusively on the conditions contained in the Charter and on the facts establishing the existence of those conditions.

63/ G A (I/1), Plen., 26th mtg., pp. 351-361.

64/ G A (I/1), Plen., 26th mtg., p. 358.

65/ For texts of relevant statements, see G A (I/1), Plen., 26th mtg.

66/ G A resolution 39 (I).

67/ G A resolution 386 (V) revoked some of the recommendations adopted in 1946. This resolution contained no reference to the question of qualifications for admission to the United Nations although it referred to membership in the specialized agencies.

68/ G A resolution 506 A (VI).

a. INFORMATION OBTAINED FROM APPLICANTS BY THE SECURITY COUNCIL

53. On 7 August 1946, the Security Council confirmed the validity of two resolutions adopted by its Committee on the Admission of New Members, under which the Committee (1) would consider written statements of fact from any of the applicant States or from any Member, bearing upon the applications which the Committee had been instructed to examine and (2) considered that it had the right to ask for information from Governments of Member States or applicants having a bearing upon the applications before the Committee. Since that time, the Committee has sent questionnaires to the following applicants: Albania, the Mongolian People's Republic, Transjordan (Jordan) and Nepal. 69/ In one instance, the Council has received information submitted by an applicant (Ceylon) when no request to that effect had been made previously by the Council, although some representatives had stated in the Council that the available information was insufficient.

b. GENERAL ASSEMBLY RESOLUTION 506 A (VI)

54. At the sixth session of the General Assembly, the delegation of Peru submitted to the First Committee a draft resolution 70/ which provided for the following action: a declaration by the General Assembly that the judgement of the United Nations on the admission of new Members should be based exclusively on the juridical conditions contained in Article 4; an invitation to applicant States to present to the Council and the Assembly all appropriate evidence relating to their qualifications under Article 4; and a recommendation to the Council to "reconsider all pending applications for membership as well as future applications in the light of such facts" as the applicants might present. The draft resolution also recommended that the Council base its action exclusively on the conditions contained in the Charter and on the facts establishing the existence of those conditions. The draft resolution was opposed by a number of representatives, who held, among other things, that the Charter and the rules of procedure of the two organs contained no provision for the submission of documents as proof of an applicant's qualifications. Several amendments 71/ to this draft resolution were submitted in the course of the debate in the First Committee, but were

69/ No questionnaire was sent to Nepal. The Committee simply requested the Government of that country to supply additional information concerning Nepal, and particularly concerning its sovereignty and independence. The questionnaire sent to Transjordan (Jordan) read as follows:

"The Committee on the Admission of New Members would be appreciative if you would be kind enough to supply additional information on the following points to assist the Committee in preparing its report.

"1. The means of maintaining the territorial integrity and political independence of the Hashemite Kingdom of Transjordan.

"2. The budget of the Hashemite Kingdom of Transjordan with as much detail as possible concerning sources of revenue and headings of expenditure.

"3. The effect of the application of the annex of the Treaty of Alliance between the United Kingdom and the Hashemite Kingdom of Transjordan of 22 March 1946 on the maintenance of Transjordan's territorial integrity and political independence.

"The asking of these questions is not in any way an expression of opinion by the Committee on the Hashemite Kingdom of Transjordan's application." (S C, 1st yr., 2nd Series, Suppl. No. 4, annex 7, appendix 18.)

70/ G A (VI), Annexes, a.i. 60, p. 3, A/C.1/702/Rev.1.

71/ G A (VI), 1st Com., 496th mtg., A/C.1/704, para. 61; G A (VI), Annexes, a.i. 60, p. 4, A/C.1/706 and A/C.1/707.

withdrawn after the substance of some of the proposed changes had been incorporated in revised versions 72/ of the draft resolution.

55. Further changes were made in the revised text before it was voted upon by the Committee; in particular, the provision that the applicant be invited to submit proof was omitted. A provision in the preamble of the original draft resolution stressing the right of applicant States to present proof, was, however, retained in the final text of the resolution. The Committee approved the modified text of the draft resolution. 73/

Decision

At its 369th plenary meeting on 1 February 1952, the General Assembly adopted the draft resolution recommended by the First Committee by 43 votes to 8, with 7 abstentions. The relevant operative paragraphs of resolution 506 A (VI) read as follows:

"The General Assembly,

".....

"1. Declares that the judgment of the United Nations on the admission of new Members ought to be based exclusively on the conditions contained in Article 4 of the Charter;

"2. Recommends that the Security Council reconsider all pending applications for the admission of new Members; that in this reconsideration, as well as in the consideration of all future applications, the members of the Council take into account such facts and evidence as States applicants for membership may present; and that the Security Council base its action exclusively on the conditions contained in the Charter and on the facts establishing the existence of these conditions;

"3. Requests the permanent members of the Security Council to confer with one another soon with a view to assisting the Council to come to positive recommendations in regard to the pending applications for membership."

7. The question of conditions of admission

56. This question first arose in the Security Council in 1946, when a number of representatives contended that the wording of Article 4 precluded the introduction of any condition for admission additional to those contained in Article 4 (1). This discussion was continued in the General Assembly in 1946 and in both organs in 1947. No decision was taken on this matter by the Security Council. The Assembly adopted two resolutions connected with it. The relevant proceedings are summarized below.

a. GENERAL ASSEMBLY RESOLUTION 113 B (II)

57. At the second session of the General Assembly, in 1947, a draft resolution 74/ submitted to the First Committee by Belgium provided that the Assembly request the

72/ G A (VI), Annexes, a.i. 60, p. 3, A/C.1/702/Rev.1 and 3.

73/ For texts of relevant statements, see G A (VI), 1st Com., 494th-501st mtgs. and 506th mtg.

74/ G A (II), 1st Com., p. 584, annex 14 j (A/C.1/242).

International Court of Justice to give an advisory opinion on the question whether a State, called upon to express itself on the admission of an applicant to membership in the United Nations, was juridically entitled to make its consent to the admission dependent on conditions not expressly provided by Article 4 (1). Some representatives opposed this draft resolution on the grounds that the matter was political and not juridical in nature, and could be judged only by the Security Council and the General Assembly. 75/ The draft resolution was approved by the Committee.

Decision

At its 118th plenary meeting on 17 November 1947, the General Assembly adopted the resolution recommended by the First Committee by 40 votes to 8, with 2 abstentions. The text of the question addressed to the Court under resolution 113 B (II) is as follows:

"Is a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article? In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State?"

b. ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE OF 28 MAY 1948

58. The final paragraph of the text of the advisory opinion delivered by the Court on 28 May 1948 reads as follows: 76/

"The Court,

"by nine votes to six

"is of opinion that a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, is not juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph I of the said Article;

"and that, in particular, a Member of the Organization cannot, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State."

Two of the judges concurring in the majority opinion wrote individual opinions. Four judges gave a joint dissenting opinion although they concurred in the opinion of the majority that the Court was competent to answer the request, holding that the admission of a new Member was pre-eminently a political act and that members of a political organ making the decision were juridically entitled to base their vote upon any political consideration which seemed to be relevant. One judge, although agreeing in substance

75/ For texts of relevant statements, see G A (II), 1st Com., 99th-103rd mtgs.

76/ Admission of a State to the United Nations, I C J, Reports 1948, p. 65.

with the joint dissenting opinion, considered that the Court should have refrained from answering the questions since the request originated in a divergence of views of a political nature, and one judge held that it would have been better if the Court had not answered the questions, which were designed to censure the reasons given by a permanent member of the Security Council.

C. GENERAL ASSEMBLY RESOLUTION 197 A (III)

59. At the first part of the third session in 1948, a draft resolution 77/ submitted to the Ad Hoc Political Committee by Australia provided that the Assembly recommend that each member of the Council and the Assembly, in exercising its vote on the admission of new Members, should act in accordance with the advisory opinion delivered by the International Court of Justice on 28 May 1948. This draft resolution was opposed by a number of representatives, who held that the Court's opinion did not represent the opinion of the majority of the judges and consequently could not be considered authoritative. They also held that the sovereign right of Members to vote for or against admission of a State was a political right which could not be curtailed by any judicial organ. The Committee approved the draft resolution. 78/

Decision

At its 177th plenary meeting on 8 December 1948, the General Assembly adopted the draft resolution recommended by the Committee by 32 votes to 10, with 2 abstentions. The relevant portions of resolution 197 A (III) reads as follows:

".....

"Whereas, the International Court of Justice in an advisory opinion of 28 May 1948 declared that: For the text of the advisory opinion quoted in the resolution, see paragraph 58 above/

"The General Assembly

"Recommends that each member of the Security Council and of the General Assembly, in exercising its vote on the admission of new Members, should act in accordance with the foregoing opinion of the International Court of Justice."

B. Questions bearing upon the provisions of Article 4 (2)

1. The question of separate or simultaneous consideration and/or admission of applicants

60. This question, which may be related to the opening words of Article 4 (2), namely, "The admission of any such state", derives from the contention that Article 4 requires the separate consideration and/or admission of applicants on their individual merits. It has also been maintained that Article 4 does not require separate votes on each application for admission and that individual consideration is sufficient. The advisory opinion of the International Court of Justice of 28 May 1948, and General Assembly resolution 197 A (III) relating thereto, have been

77/ G A (III/1), Plen., Annexes, A/761, para. 19, resolution A.

78/ For text of relevant statements, see G A (III/1), Ad Hoc Pol. Com., 6th-14th mtgs.

invoked as precluding the latter interpretation. 79/ So far, the Security Council has in each case decided by a separate vote to recommend that the General Assembly admit an applicant State, although on two occasions 80/ more than one applicant was listed in the actual recommendation and on several occasions, 81/ the Council voted on a proposal to recommend the simultaneous admission on several applicants. In most instances, the General Assembly has decided to admit new Members by a separate vote in each case. However, there is no indication in the Official Records of a separate vote having been taken by the Assembly in the cases of Afghanistan, Iceland and Sweden. 82/

a. PROPOSALS SUBMITTED IN THE SECURITY COUNCIL

61. The first draft resolution 83/ to recommend the admission of a number of applicants was submitted to the Security Council in 1946, but was withdrawn after opposition had been expressed by other delegations. Similar proposals were made and withdrawn in the Council in 1946 and 1947. In 1947 the Council did not vote upon a draft resolution 84/ calling for a recommendation for the admission of five applicant States. This draft resolution was opposed by the majority of members of the Council on the grounds that the applications should be discussed and voted upon separately. The Council decided to vote upon each of the listed applications separately. Draft resolutions to recommend admission of a number of applicants have since been submitted to the Security Council at various times; some of these draft resolutions 85/ called for the simultaneous admission of the applicant States which were listed. In one case 86/ the Security Council voted separately on each of the applicants listed in one of these draft resolutions, and then voted upon and rejected the draft as such; in another case 87/ it rejected the draft resolution as a whole; and in a third case, 88/ described below, it voted separately on one of the applications (in the form of a separate draft resolution submitted earlier) 89/ and rejected the draft resolution recommending the admission of a number of applicants.

62. The following account of this last-mentioned instance is given as an example: At its 577th meeting on 18 June 1952, the Security Council had before it a draft resolution 90/ submitted by the USSR providing that the Council recommend to the General Assembly the simultaneous admission to membership of the following applicants: Albania, the Mongolian People's Republic, Bulgaria, Romania, Hungary, Finland, Italy, Portugal, Ireland, Jordan, Austria, Ceylon, Nepal and Libya. The Council took up

79/ See paras. 56-59 above.

80/ S C resolution of 29 August 1946, S/177, concerning the admission of Afghanistan, Iceland and Sweden, and S C resolution of 21 August 1947, S C, 2nd yr., No. 81, 190th mtg., p. 2136, concerning the admission of Pakistan and Yemen.

81/ See paras. 61 and 62 below.

82/ G A (I/2), Plen., 47th mtg., p. 943.

83/ An account of the discussion of this proposal is given in paragraphs 26-31.

84/ S C, 2nd yr., No. 90, 204th mtg., p. 2412, S/565.

85/ S C, 4th yr., No. 41, 443rd mtg., pp. 33 and 34, S/1340/Rev.2; S C, 7th yr., 573rd mtg., p. 12, S/2449/Rev.1, and S C, 7th yr., 590th mtg., S/2664, para. 33.

86/ S C, 4th yr., No. 41, 443rd mtg., pp. 33 and 34, S/1340/Rev.2; S C, 4th yr., Nos. 31-34 and 39-42, 428th-431st and 439th-445th mtgs.

87/ S C, 7th yr., 573rd mtg., p. 12, S/2449/Rev.1; S C, 7th yr., 568th, 569th and 573rd mtgs.

88/ S C, 7th yr., 577th and 594th-597th mtgs., S C, 7th yr., 590th mtg., S/2664, para. 33.

89/ S C, 7th yr., Suppl. for Jan., Feb. and March, p. 12, S/2483; S C, 7th yr., 594th-600th mtgs.

90/ S C, 7th yr., 590th mtg., S/2664, para. 33.

discussion of the draft resolution in meetings held from 2 to 8 September 1952 inclusive. ^{91/} In support of this draft resolution the representative of the USSR maintained that the problem of admission of new Members could only be solved by simultaneously admitting the fourteen States which had applied and stated that there was nothing in the Charter to prevent the admission of several States by a single resolution. Other members of the Council considered that the draft resolution did not conform with Article 4 (1), since it made the admission of countries which were fully qualified dependent upon the admission of other countries backed by the USSR. Several members of the Council regarded some or all of the latter as not qualified for admission. The representative of the USSR considered that the opposition to admission of the people's democracies was due to a desire on the part of some States to constrain those countries to change their internal system of government, a policy he regarded as being contrary to the Charter. ^{92/}

Decision

At the 597th meeting of the Council on 8 September 1952, the draft resolution submitted by the USSR was rejected. There were 2 votes in favour (Pakistan, USSR), 5 against and 4 abstentions.

b. PROPOSALS SUBMITTED IN THE GENERAL ASSEMBLY

63. Draft resolutions ^{93/} listing a number of applicants have been submitted at the first, fourth, fifth, sixth, seventh and eighth sessions of the General Assembly in connexion with the question of the admission of new Members. Most of these proposals provided that the General Assembly request the Security Council to reconsider the applications which were listed therein, but some called for simultaneous reconsideration of those applications. At the first session, three such draft resolutions were merged, and the resulting common text was adopted by the General Assembly as resolution 35 (I). At the fourth, fifth and seventh sessions, the draft resolutions in question were rejected. At the sixth session, the First Committee approved a draft resolution ^{94/} providing that the Assembly recommend that the Council reconsider thirteen applications and consider a fourteenth. This draft resolution was not adopted by the General Assembly since it failed to obtain the two-thirds majority which the Assembly had previously decided was required. Two draft resolutions ^{95/} submitted at the eighth session were not pressed to a vote by the delegation which submitted them.

64. The following paragraphs provide illustrative summaries of the proceedings of the General Assembly in some of the above-mentioned cases:

^{91/} S C, 7th yr., 594th-597th mtgs.

^{92/} For texts of relevant statements, see S C, 7th yr., 594th-597th mtgs.

^{93/} G A (I/2), 1st Com., pp. 319-321, annexes 6 b (A/C.1/26), 6 c (A/C.1/30), and 6 d (A/C.1/32);

G A (IV), Ad Hoc Pol. Com., Annex, vol. I, pp. 8 and 9, A/AC.31/L.19;

G A (IV), Plen., Annex, p. 34, A/1079;

G A (V), Annexes, a.i. 19, p. 3, A/1577;

G A (VI), 1st Com., 495th mtg., A/C.1/703, para. 23;

G A (VI), Annexes, a.i. 60, pp. 5 and 6, A/2100;

G A (VII), Ad Hoc Pol. Com., 45th mtg., A/AC.61/L.35/Rev.1, para. 1;

G A (VII), Annexes, a.i. 19, p. 11, A/L.142.

^{94/} G A (VI), Annexes, a.i. 60, p. 8, A/2100, draft resolution II.

^{95/} G A (VIII), Annexes, a.i. 22, A/2520, paras. 15 and 16.

i. Proceedings at the first session of the General Assembly

65. At the second part of the first session of the General Assembly in 1946, three draft resolutions, 96/ submitted respectively by Panama, Egypt and the Philippines, provided for a request by the General Assembly to the Security Council to reconsider the applications of Albania, the Mongolian People's Republic, Transjordan, Ireland and Portugal. A sub-committee of the First Committee drafted a common text on the basis of these proposals, and the text recommended was approved 97/ by the First Committee.

Decision

At the 49th meeting of the General Assembly on 19 November 1946, the draft resolution recommended by the First Committee was adopted unanimously. The relevant portion of resolution 35 (I) reads as follows:

"Therefore, the General Assembly recommends that the Security Council re-examine the applications for membership in the United Nations of the above-mentioned States /The People's Republic of Albania, the Mongolian People's Republic, the Hashemite Kingdom of Transjordan, Ireland and Portugal/ on their respective merits as measured by the yardstick of the Charter, in accordance with Article 4."

ii. Proceedings at the sixth session of the General Assembly

66. At the sixth session of the General Assembly, in January 1952, a draft resolution 98/ submitted to the First Committee by the USSR provided that the Assembly recommend that the Security Council reconsider the applications of Albania, the People's Republic of Mongolia, Bulgaria, Romania, Hungary, Finland, Italy, Portugal, Ireland, Jordan, Austria, Ceylon and Nepal, and also consider the application of Libya. In support of this draft resolution, it was held that the provisions of Article 4 should be applied to all candidates instead of pursuing a policy of discrimination against some and of favouritism towards others. It was also argued that admission of the States listed would make it easier to establish normal relations with all of them and would thereby contribute to the universality and effectiveness of the Organization. The representatives who opposed the draft resolution held that it made the admission of new Members dependent on conditions other than those of Article 4 and ran counter both to that Article and to the advisory opinion of the International Court of Justice of 28 May 1948. Some of the candidates, it was held, did not meet the simple requirements of membership, and the draft resolution did not list all of the pending applications. The draft resolution was approved by the First Committee by 21 votes to 12, with 25 abstentions. 99/

Decision

At its 370th meeting on 1 February 1952, the General Assembly decided that adoption of the draft resolution recommended by the First Committee required a two-thirds majority. The draft resolution then received 22 votes in favour to 21 against, with 16 abstentions, and was not adopted, having failed to obtain the required two-thirds majority. 100/

96/ G A (I/2), 1st Com., pp. 319-321, annexes 6 b (A/C.1/26), 6 c (A/C.1/30), and 6 d (A/C.1/32).

97/ For text of relevant statements, see G A (I/2), 1st Com., 14th and 17th mtgs.

98/ G A (VI), 1st Com., 495th mtg., A/C.1/703, para. 23.

99/ For texts of relevant statements, see G A (VI), 1st Com., 494th-501st mtgs.

100/ For texts of relevant statements, see G A (VI), Plen., 369th and 370th mtgs.

iii. Proceedings at the seventh session of the General Assembly

67. At the seventh session of the General Assembly, a draft resolution 101/ submitted to the Ad Hoc Political Committee by Poland provided that the Assembly request the Council to reconsider the applications of Albania, the Mongolian People's Republic, Bulgaria, Romania, Hungary, Finland, Italy, Portugal, Ireland, Jordan, Austria, Ceylon, Nepal and Libya in order to submit a recommendation on the simultaneous admission of those States as Members of the United Nations. This draft resolution was opposed by the majority of those speaking in the discussion, on the grounds that it would violate the Charter and would involve disregard of the advisory opinion of the International Court of Justice of 28 May 1948, in that the admission of certain States was made conditional upon that of certain others, rather than upon an objective and individual study of the merits of the applicants. Since the text submitted by Poland did not list all applicants, it could not even be regarded as an application of the principles of universality. In favour of the proposal it was declared that the simultaneous admission of fourteen applicant States was the only just course toward a proper solution of the problem. The text offered by Poland was submitted, it was held, with a view to increasing universality of the United Nations by admitting all States capable of contributing to the fulfilment of all Charter principles.

68. On the request of the representative of Egypt that a separate vote be taken on the word "simultaneous" in this text, the Committee decided, on 19 December, to delete this word. It then rejected the draft resolution as modified. 102/

69. The draft resolution submitted by Poland 103/ was reintroduced at the 410th plenary meeting of the General Assembly on 21 December 1952, when the representative of the Philippines requested that a separate vote be taken on the word "simultaneous" in the draft resolution. The representative of Poland and other representatives said that they would vote against the draft resolution if it were decided to omit the word "simultaneous".

Decision

At the 410th meeting of the General Assembly on 21 December 1952, the proposal to retain the word "simultaneous" in the draft resolution submitted by Poland was rejected by 10 votes to 9, with 25 abstentions. The draft resolution, as amended, was rejected by 30 votes to 9, with 10 abstentions.

*2. The question of the nature of the functions of the Security Council
and of the General Assembly envisaged by the words "will be
effected by a decision of the General Assembly upon the
recommendation of the Security Council"*

70. This question has arisen in connexion with the various interpretations which have been given at one time or another to the meaning and the effect of this portion of Article 4 (2). The question was first discussed in 1946, when the representative of Australia in the Security Council, during the consideration of the Council's provisional rules of procedure, put forward certain views on the relationship between the two organs. He held that the initiative in matters of admission belonged to the

101/ G A (VII), Ad Hoc Pol. Com., 45th mtg., A/AC.61/L.35/Rev.1, para. 1.

102/ For texts of relevant statements, see G A (VII), Ad Hoc Pol. Com., 41st-50th mtgs.

103/ G A (VII), Annexes, a.i. 19, p. 11, A/L.142.

General Assembly, and that the recommendation of the Council could concern only matters relating to security. 104/ The question was also raised at the second part of the first session of the General Assembly, particularly during discussion of a proposal submitted by Australia that the Assembly request the Security Council to appoint a committee to confer with a committee on procedures of the Assembly with a view to preparing rules governing the admission of new Members which would be acceptable both to the Assembly and to the Council. 105/ The question was raised in another form during discussion of the question of admission in the First Committee at the second regular session of the General Assembly, when four draft resolutions 106/ were submitted by Argentina providing that the Assembly admit certain applicants, named in the relevant draft resolutions, and that it defer consideration of certain other applications. These draft resolutions were based on the argument that the language used in Article 4 (2) gave the power of decision to the General Assembly. Reference was also made to the interpretation by the Advisory Committee of Jurists at the San Francisco Conference, an interpretation subsequently approved by the Conference itself, in which the powers of the Assembly "to reject ... a recommendation to the effect that a given state should not be admitted" and, it was argued, accordingly to decide favourably on its admission, were expressly recognized.

71. At the first part of the third session of the General Assembly Argentina submitted to the Ad Hoc Political Committee another draft resolution, 107/ in connexion with which the same considerations were invoked. A series of draft resolutions 108/ was also submitted to the Security Council by the representative of Argentina during 1949, containing considerations along similar lines. At the fourth session of the General Assembly, a draft resolution 109/ submitted to the Ad Hoc Political Committee by Argentina led to the adoption by the General Assembly of resolution 296 J (IV) requesting an advisory opinion of the International Court of Justice. For details of this resolution requesting the opinion of the Court, see paragraphs 81-84 below. 110/

104/ S C, 1st yr., 1st Series, No. 2, 41st mtg., pp. 261-268.

105/ G A (I/2), 1st Com., 17th mtg., pp. 72-83.

106/ G A (II), 1st Com., pp. 580, 582 and 583, annexes 14 b (A/C.1/184), 14 c (A/C.1/185), 14 d (A/C.1/186), and 14 h (A/C.1/222).

107/ G A (III/1), Ad Hoc Pol. Com., Annexes, p. 9, A/AC.24/15; see paras. 86-91 below.

108/ S C, 4th yr., Suppl. for June, pp. 11-14, S/1331-S/1337; see paras. 86-91 below.

109/ G A (IV), Ad Hoc Pol. Com., Annexes, vol. I, pp. 7 and 8, A/AC.13/L.18.

110/ At the seventh session of the General Assembly a number of proposals bearing upon this question and the one dealt with in paragraphs 86-91 below were submitted to the Ad Hoc Political Committee and were subsequently considered by the General Assembly's Special Committee on the Admission of New Members. These proposals, which have not been dealt with here because they have not been acted upon by the Assembly and remain before it, are the following:

G A (VII), Annexes, a.i. 19, p. 2, A/AC.61/L.30, p. 3, A/AC.61/L.31 and p. 5, A/AC.61/L.36.

The text of these proposals, as well as an account of discussion in the Ad Hoc Political Committee and in the Special Committee of the Assembly, may be found in documents A/AC.64/L.1 (Memorandum on the historical background of the question of the admission of new Members) and A/2400, G A (VIII), Annexes, a.i. 22, pp. 1-20.

72. The remaining draft resolutions mentioned above failed to be adopted by the Council and the Assembly, at least in their original form bearing upon the present question. The practice of the General Assembly has been to admit new Members only on the basis of a positive recommendation by the Security Council. On every occasion when the General Assembly has decided to admit an applicant state to membership in the United Nations, it has, in its relevant resolution, expressly taken note of the fact that the Assembly had received from the Security Council a recommendation for the admission of that applicant. In the cases of applicants which have not received such a recommendation, the Assembly has frequently requested reconsideration by the Council. A list of such requests is included in the annex. The rules of procedure of the two organs contain provisions which define, to a certain extent, the respective functions of the Council and the Assembly in this matter. An account of the relevant portions of these rules and of certain decisions taken in connexion with them follows:

a. RELEVANT RULES OF PROCEDURE OF THE SECURITY COUNCIL
AND OF THE GENERAL ASSEMBLY

73. In the course of study of the provisional rules of procedure of the Security Council by the Committee of Experts of the Council in 1946, the representative of Australia maintained that, since admission was a collective act of the Council and of the Assembly, the initiative belonged to the Assembly, which should determine when, how and by whom applications should be considered. This point of view, which was rejected by the Committee, was stated again in the Security Council when the latter undertook consideration of the Committee's report.^{111/} The representative of Australia held that the recommendations on admission which the Council could make could concern only matters relating to security, after which it was still up to the Assembly to weigh the merits of the case and the fitness of the candidate with respect to other aspects of the Charter. He urged that the Council refrain from definitely adopting rules which concerned another organ and proposed ^{112/} that the President of the Council discuss with the President of the Assembly the best method of consultation between the appropriate representatives of the two organs with a view to bringing about the adoption of appropriate rules by both. He also submitted an outline ^{113/} of what his delegation regarded as the appropriate procedure for admission.

74. The point of view put forward by Australia was opposed by other members of the Council on the grounds that Article 4 (2) clearly laid a special responsibility upon the Council and that the analogous provisions of Articles 6 and 97 made it clear that recommendations of the Council were not limited solely to matters of security.

Decisions

At its 42nd meeting on 17 May 1946, the Security Council rejected the draft resolution submitted by Australia by 1 vote in favour to 10 against. Chapter X of the provisional rules of procedure recommended by the Committee was then adopted ^{114/} by 10 votes to 1.

^{111/} S C, 1st yr., 1st Series, Suppl. No. 2, pp. 20-30, annex 1 d (S/57). The relevant portions of the report were considered at the 41st and 42nd meetings of the Council on 16 and 17 May 1946, S C, 1st yr., 1st Series, No. 2.

^{112/} S C, 1st yr., 1st Series, No. 2, 42nd mtg., p. 277.

^{113/} Ibid., 41st mtg., p. 265.

^{114/} Ibid., 42nd mtg., p. 277.

75. At the second part of the first regular session of the General Assembly, the representative of Australia again raised the question of ensuring conformity between the respective rules of the two organs. On 19 November 1946, the Assembly adopted resolution 36 (I), by which it requested the Council to appoint a committee to confer with a committee on procedures of the Assembly. The Council subsequently instructed its Committee of Experts to name a small sub-committee for that purpose. As a result of their work, the two bodies recommended 115/ to the Council and to the Assembly the adoption of various changes in their respective rules.

76. The recommended changes in the rules of the Security Council were the amended provision concerning submission of the declaration of acceptance of Charter obligations and the two new provisions 116/ that if the Council recommended the applicant State for membership, a complete record of the discussion was to be forwarded to the Assembly with the recommendation, and, that if the Council did not recommend the applicant or postponed consideration of the application, it was to submit a special report to the Assembly with a complete record of the discussion.

77. The recommended changes in the rules of procedure of the General Assembly, in addition to the above-mentioned provision 117/ concerning the declaration of acceptance and a consequential change making membership effective on the date of the decision of the Assembly, provided that if the Council did not recommend the applicant State or postponed consideration of the application, the Assembly might, after full consideration of the special report of the Council, send back the application to the Council, together with a full record of the discussion in the Assembly, for further consideration and recommendation or report.

78. The reports of the bodies of the Security Council and of the General Assembly were considered by the two organs on 9 December and 21 November 1947 respectively.

Decisions

At the 222nd meeting on 9 December 1947, the Security Council adopted the modified rules of procedure without objection.

At its 122nd plenary meeting on 21 November 1947, the General Assembly adopted the modified rules of procedure without objection.

79. The changes thus adopted by the two organs made the text of their respective rules in regard to admission substantially the same as at present. The text of those portions of the present rules which are particularly relevant to this question follows:

"Rules 58 and 60 of the provisional rules of procedure of the Security Council

"Rule 58

"Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall contain a declaration made in a formal instrument that it accepts the obligations contained in the Charter."

115/ S C, 2nd yr., Suppl. No. 19, annex 44 (S/520 and Add.1); G A (II), 1st Com., pp. 546-554, annex 7 (A/384).

116/ Two new paragraphs (the second and third) in rule 60.

117/ New rule (present rule 139).

"Rule 60"

"The Security Council shall decide whether in its judgement the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and accordingly whether to recommend the applicant State for membership.

"If the Security Council recommends the applicant State for membership, it shall forward to the General Assembly the recommendation with a complete record of the discussion.

"If the Security Council does not recommend the applicant State for membership or postpones the consideration of the application, it shall submit a special report to the General Assembly with a complete record of the discussion."

"Rules 135, 137 and 138 of the rules of procedure
of the General Assembly""Applications""Rule 135"

"Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall contain a declaration, made in a formal instrument, that it accepts the obligations contained in the Charter."

"Consideration and decision by the General Assembly""Rule 137"

"If the Security Council recommends the applicant State for membership, the General Assembly shall consider whether the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and shall decide, by a two-thirds majority of the Members present and voting, upon its application for membership.

"Rule 138"

"If the Security Council does not recommend the applicant State for membership or postpones the consideration of the application, the General Assembly may, after full consideration of the special report of the Security Council, send back the application to the Security Council, together with a full record of the discussion in the General Assembly, for further consideration and recommendation or report."

b. GENERAL ASSEMBLY REQUESTS FOR RECONSIDERATION OF
APPLICATIONS BY THE SECURITY COUNCIL

80. The General Assembly has addressed numerous recommendations to the Council for reconsideration of some or all of the pending applications for admission. In 1946, the Assembly recommended 118/ that the Council re-examine five applicants on their respective merits as measured by the yardstick of the Charter in accordance with Article 4. In 1947, it requested 119/ the Council to reconsider six applications in

118/ G A resolution 35 (I).

119/ G A resolutions 113 C-H (II).

the light of the determination of the General Assembly that the applicants in question were qualified and should be admitted. In 1948, the Assembly asked 120/ the Council to reconsider the applications of the States mentioned in the special reports of the Council, and requested the Council to reconsider the applications of six States, taking into account the circumstances in each particular case, the determination of the General Assembly and the advisory opinion of the International Court of Justice of 28 May 1948. In 1949, the Assembly requested 121/ the Council to reconsider the applications of nine States and to keep under consideration the pending applications of all States which so far had not gained admission. In 1950, the Assembly reiterated 122/ its request that the Council keep pending applications under consideration. At its sixth session, ending early 1952, the Assembly recommended 123/ that the Council reconsider all pending applications, basing its actions exclusively on the conditions for admission contained in the Charter and on the facts establishing the existence of those conditions. At its seventh session, also in 1952, the Assembly did not request reconsideration, and limited itself to asking 124/ the Council to take note of a determination which it expressed with respect to six applicants.

C. REQUEST FOR AN ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE

81. At the fourth session of the General Assembly in 1949, a draft resolution 125/ was submitted by Argentina under which the Assembly would submit several questions to the International Court of Justice with a request for an advisory opinion. The preamble referred to the interpretation of the Advisory Committee of Jurists, which had been approved by the San Francisco Conference, and which had dealt with the right of the Assembly to accept or to reject a recommendation that a given State should or should not be admitted to the United Nations. The Court was to be asked: (1) Whether this interpretation referred to a recommendation by the Security Council to the effect that a given State should not be admitted to the United Nations. If the Court's reply should be in the affirmative, it was to be asked whether that meant that the Council could make a recommendation against admission; (2) whether the interpretation of the Advisory Committee of Jurists was the only authentic one of the powers of the Assembly with respect to the admission of new Members; (3) if the Court found that it was not the only authentic one, it would be asked to determine whether there was any provision in the Charter which afforded legal support for the view that the recommendation to which Article 4 referred must always be positive; (4) whether the decision to admit a State to membership had to be to the same effect as the Council's recommendation, namely, either positive or negative, or whether the Assembly had complete freedom of decision; (5) if the Court answered the fourth question in the affirmative, it would be asked whether it was absolutely essential that the Council should adopt a resolution in the form of a positive or negative recommendation, or whether it was sufficient that the Council should have taken cognizance of the request and should have had an opportunity to express its opinion, even if for any reason it had not expressed an opinion; (6) whether the admission of new Members was a purely legal question or whether the General Assembly might be guided by political considerations in exercising its powers of decision.

120/ G A resolutions 197 B and C-I (III).

121/ G A resolutions 296 A-I and K (IV).

122/ G A resolution 495 (V).

123/ G A resolution 506 A (VI).

124/ G A resolution 620 (VII).

125/ G A (IV), Ad Hoc Pol. Com., Annex, vol. I, p. 7, A/AC.31/L.18.

82. In submitting 126/ this draft resolution, the representative of Argentina reiterated views expressed at previous sessions concerning the nature of the vote by which the Council decided to make a recommendation for admission, 127/ and recalled his analysis of the respective powers of the Assembly and the Council with regard to admission, 128/. In this analysis, he had made the following points, among others: The opinion of the Advisory Committee of Jurists had been that the text of Article 4 meant that the Assembly had the power to accept or to reject a recommendation of the Council, which could be favourable or unfavourable; but whatever the nature of that recommendation, the Assembly should take the final decision. That interpretation had been approved as final by the San Francisco Conference. Under Article 4, the Council was bound to transmit requests for admission, together with its opinion, to the General Assembly. The Council could not prevent the Assembly from making use of the powers which it possessed by virtue of Article 4.

83. Although doubts and reservations were voiced by many members during the discussion in the Committee, the majority expressed themselves in favour of seeking an advisory opinion. Other representatives opposed the draft resolution submitted by Argentina as an attempt to by-pass the Security Council which might endanger the prestige of the Court by involving it in political matters. The following were among the other points made during the debate: caution should be exercised in calling for the legal opinion of the Court in matters with political implications. The text of Article 4 was perfectly clear and most of the documents of the San Francisco Conference contradicted the interpretation given by the delegation of Argentina. Moreover, the interpretation approved by the Conference had been that the Assembly could in each case accept or reject the recommendation of the Council, whether favourable or unfavourable, but that did not mean that an applicant which had failed to be recommended or had been recommended unfavourably, could be admitted by the Assembly. It was obvious that a recommendation was, by definition, a positive one.

84. After some discussion, the representative of Argentina accepted the suggestion that he consult with other representatives and he later submitted a revised text of his draft resolution. 129/ Only one question was to be put to the Court: Whether the admission of a State to membership in the United Nations, pursuant to Article 4, could be effected by a decision of the Assembly when the Council had made no recommendation for admission by reason of the candidate failing to obtain the requisite majority, or by reason of the negative vote of a permanent member of the Council on a draft resolution to recommend. The representative of Argentina also accepted an amendment offered by the Netherlands deleting the reference to the interpretation by the Advisory Committee of Jurists and substituting a reference to the discussion in the Committee. The draft resolution as modified was approved by the Committee. 130/

Decision

At its 252nd plenary meeting on 22 November 1949, the General Assembly adopted the resolution recommended by the Ad Hoc Political Committee by 42 votes to 9, with 6 abstentions. The text of the question put to the Court in resolution 296 J (IV) follows:

126/ G A (IV), Ad Hoc Pol. Com., 26th mtg., paras. 31-53.

127/ See paras. 86-91 below.

128/ This analysis was made at the first part of the third session. G A (III/1), Ad Hoc Pol. Com., 6th mtg., pp. 59-63, and 11th mtg., pp. 118-122.

129/ G A (IV), Ad Hoc Pol. Com., Annex, vol. I, p. 8, A/AC.31/L.20.

130/ For texts of relevant statements, see G A (IV), Ad Hoc Pol. Com., 25th-29th mtgs.

"Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent member upon a resolution so to recommend?".

d. ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE OF 30 MARCH 1950

85. In response to the resolution of the General Assembly, the Court delivered an advisory opinion on 3 March 1950. The Court answered the question put to it in the resolution in the negative by 12 votes to 2. ^{131/} The majority of the judges held that the Court was called upon to determine solely whether the Assembly could make a decision to admit a State when the Council had transmitted no recommendation; it did not have to examine whether the negative vote of a permanent member was effective to defeat a recommendation which had obtained seven or more votes. Two things were required to effect admission: a recommendation of the Security Council and a decision of the Assembly, the recommendation having to precede a decision. The natural and ordinary meaning of the relevant terms was perfectly clear; the Court, noting that in practice no unfavourable recommendation had ever been made, stated that Article 4 (2) had in view only a favourable recommendation of the Council. Nowhere had the Assembly received the power to change, to the point of reversing the meaning of a vote of the Council. In consequence, it was impossible to admit that the Assembly had the power to attribute to the vote of the Council the character of a recommendation when the Council itself considered that no such recommendation had been made. One of the dissenting judges considered that the Assembly could proceed to admit a State without a recommendation by the Council if it determined that the right of "veto" had been abused. The other dissenting judge held that the "veto" did not apply to a recommendation for the admission of a State.

*3. The question whether the recommendation of the Security Council
is subject to the voting procedure prescribed by
Article 27 (3) of the Charter*

86. This question has arisen in connexion with the contention that the provisions of Article 27 (2) should govern voting in the Security Council on recommendations for admission to membership in the Organization. That contention has been based in part on the fact that no specific reference is made to the admission of new Members in the declaration of the sponsoring Powers of the San Francisco Conference regarding voting procedure in the Security Council; and it has been supported partly by interpretations of the Charter as endowing the General Assembly with the main responsibility in matters of admission and as limiting the application of the unanimity rule to decisions, taken within the Council, concerning the maintenance of international peace and security. In response to these contentions, it has been declared that recommendations for admission obviously come within the category of decisions requiring the unanimity of the permanent members of the Council. Among other considerations adduced in support of this point of view, reference has been made to the provisions of Article 18, under which admission of new Members is one of the important questions to be decided by a two-thirds majority of the Assembly, as making it clear that the question could not be regarded as a procedural one in the Council. It has also been emphasized that, since Articles 5, 6 and 97 employ wording similar to that of Article 4 (2), in respect of matters admittedly subject to the unanimity rule, there can be no question of the applicability of that rule to recommendations for admission.

^{131/} Competence of Assembly regarding admission to the United Nations, I C J, Reports 1950, p. 10.

a. PRACTICE OF THE SECURITY COUNCIL

87. In every instance, recommendations for admission of applicant States have been adopted by the Security Council by a majority of seven or more votes in favour, including the concurring votes of the five permanent members. Abstentions by permanent members, in accordance with the practice dealt with in the study on Article 27, have been regarded as not affecting the requirement of concurring votes by those members. 132/ The permanent members of the Council have indicated acceptance of the view that the provisions of Article 27 (3) govern voting on recommendations for admission, and four of them have at various times expressed their readiness, or undertaken, to refrain from using their privileged vote in connexion with such recommendations. 133/

b. PROPOSALS SUBMITTED TO THE SECURITY COUNCIL
AND TO THE GENERAL ASSEMBLY

88. The first formal proposal bearing on this question to be submitted in the General Assembly was put before the First Committee at the second regular session in 1947, in the form of four draft resolutions submitted by Argentina 134/ providing that the Assembly admit certain applicants to membership and defer consideration of certain other applications. Those applicants which had received seven or more favourable votes in the Council were to be admitted, while consideration of the other applications would be deferred. These proposals were subsequently withdrawn in favour of other draft resolutions requesting the Council to reconsider certain applicants. 135/ Another draft resolution 136/ was submitted by Argentina at the first part of the third session and is dealt with below. The representative of Argentina renewed his contention concerning the inapplicability of the privileged vote to the admission of new Members in connexion with a series of draft resolutions 137/ which he submitted to the Council in 1949. These proposals, however, did not include provisions bearing on it. When voted upon by the Council, the draft resolutions failed to be adopted 138/ owing to the negative vote of a permanent member. A number of proposals 139/ bearing on this question were submitted at the sixth and seventh sessions of the General Assembly but, except for the instance which follows, have not been dealt with here since they have not been voted upon by the Assembly.

89. At the first part of the third session of the Assembly in 1948, the representative of Argentina submitted a draft resolution 140/ to the Ad Hoc Political Committee providing that the Assembly decide that applications for membership would be submitted to the Assembly when the Council had reached its decision. The decision of the Council would be deemed a recommendation in favour of admission if an application had received seven or more affirmative votes. The Assembly was also to decide that it

132/ Permanent members of the Council have in two instances abstained on recommendations adopted by the Council: the United Kingdom, in the case of the application of Israel, and China in the case of the application of Indonesia.

133/ China, France, United Kingdom and United States.

134/ G A (II), 1st Com., pp. 580, 581 and 583, annexes 14 b (A/C.1/184), 14 c (A/C.1/185), 14 d (A/C.1/186) and 14 h (A/C.1/222).

135/ The other proposals in question became G A resolutions 113 C-G (II).

136/ G A (III/1), Ad Hoc Pol. Com., Annexes; p. 9, A/AC.24/15.

137/ S C, 4th yr., Suppl. for June, pp. 11-14, S/1331-S/1337.

138/ S C, 4th yr., No. 41, 443rd mtg.

139/ G A (VI), Annexes, a.i. 60, p. 5, A/C.1/708;

G A (VII), Annexes, a.i. 60, pp. 2, 3 and 5, A/AC.61/L.30, 31 and 36.

140/ See footnote 136.

had the right both to reject an application which was the subject of a favourable recommendation and to admit an applicant which had been unfavourably recommended, such decisions to be supported by a two-thirds majority. In presenting this draft resolution, the representative of Argentina stated that the Council, by not recommending applicants in cases where its permanent members failed to achieve unanimity, was exceeding its powers under the Charter, since only the Assembly had the power of decision in such matters. The draft resolution submitted by Argentina was opposed by a majority of the speakers in the debate on the grounds that its terms were not consonant with the provisions of the Charter. A motion made by Yugoslavia that the Committee vote that the General Assembly was not competent to adopt the proposal was, however, rejected by 28 votes to 10, with 11 abstentions. The draft resolution submitted by Argentina was withdrawn after this vote. A proposal by the USSR that the vote on the motion made by Yugoslavia be considered null and void in consequence of the withdrawal of the draft resolution in question was rejected by 34 votes to 8, with 5 abstentions. 141/

C. GENERAL ASSEMBLY RECOMMENDATIONS TO THE PERMANENT MEMBERS
OF THE SECURITY COUNCIL

90. At the second part of its third session, on 14 April 1949, the General Assembly adopted resolution 267 (III), by which it recommended to the permanent members of the Security Council that they seek agreement among themselves upon possible decisions by the Council in respect to which they might forbear to exercise their veto, when seven affirmative votes had already been cast in the Council and give favourable consideration to the list 142/ of such decisions annexed to the resolution among which was included a recommendation to the Assembly on the admission of a State to membership.

91. At its fourth session, on 22 November 1949, the General Assembly adopted resolution 296 K (IV) by which it requested the permanent members of the Council to refrain from the use of the veto in connexion with the recommendation of States for membership in the United Nations.

141/ For texts of relevant statements, see G A (III/1), Ad Hoc Pol. Com., 6th-14th mtgs.

142/ G A (III), Suppl. No. 10, A/578, p. 3.

ANNEX

Tabulation of principal instances in which formal votes relating to admission of new members were taken by the Security Council and the General Assembly

I. SECURITY COUNCIL

Applications and a/ draft resolutions:	Meeting and date	Vote b/ For Against Abstention		Result of proceedings
<u>1946</u>				
Albania	57th mtg., 29.8	5	3*	3
Mongolian People's Republic	57th mtg., 29.8	6	3*	2
Afghanistan	57th mtg., 29.8	10	0	1
Transjordan (Jordan)	57th mtg., 29.8	8	2*	1
Ireland	57th mtg., 29.8	9	1*	1
Portugal	57th mtg., 29.8	8	2*	1
Iceland	57th mtg., 29.8	10	0	1
Sweden	57th mtg., 29.8	10	0	1
Siam (Thailand)	83rd mtg., 12.12	11	0	0
<u>1947</u>				
Albania	186th mtg., 18.8	3	4*	4
Mongolian People's Republic	186th mtg., 18.8	3	3*	5
Transjordan (Jordan)	186th mtg., 18.8	9	1*	1
Ireland	186th mtg., 18.8	9	1*	1
Portugal	186th mtg., 18.8	9	2*	0
Yemen	186th mtg., 18.8	11	0	0
Pakistan	186th mtg., 18.8	11	0	0
Hungary	190th mtg., 21.8	1	1*	9

a/ Draft resolutions are identified as such only when they concerned a number of applications.

b/ When a negative vote by one or more permanent members of the Security Council is included in the votes against, the corresponding figure is marked with an asterisk.

<u>Applications and draft resolutions</u>	<u>Meeting and date</u>	<u>Vote For Against Abstention</u>	<u>Result of proceedings</u>
<u>1947 (cont'd.)</u>			
Italy	190th mtg., 21.8	9 1*	Not recommended
Austria	190th mtg., 21.8	8 1*	Not recommended
Romania	190th mtg., 21.8	1 0 10	Not recommended
Bulgaria	190th mtg., 21.8	1 1*	Not recommended
Hungary	206th mtg., 1.10	5 0 6	Not recommended
Italy	206th mtg., 1.10	9 2*	Not recommended
Romania	206th mtg., 1.10	4 0 7	Not recommended
Bulgaria	206th mtg., 1.10	1 3*	Not recommended
Finland	206th mtg., 1.10	9 2*	Not recommended
<u>1948</u>			
Burma	279th mtg., 10.4	10 0 1	Recommended
Italy	279th mtg., 10.4	9 2*	Not recommended
Ceylon	351st mtg., 18.8	9 2*	Not recommended
Ceylon	384th mtg., 15.12	9 2*	Not recommended
Israel	386th mtg., 17.12	5 1 5	Not recommended
<u>1949</u>			
Israel	414th mtg., 4.3	9 1 1 c/	Recommended
Republic of Korea	423rd mtg., 8.4	9 2*	Not recommended
Democratic People's Republic of Korea d/			
Nepal	439th mtg., 7.9	9 2*	Not recommended
Portugal	443rd mtg., 13.9	9 2*	Not recommended
Jordan	443rd mtg., 13.9	9 2*	Not recommended
Italy	443rd mtg., 13.9	9 2*	Not recommended
Finland	443rd mtg., 13.9	9 2*	Not recommended
Ireland	443rd mtg., 13.9	9 2*	Not recommended
Austria	443rd mtg., 13.9	9 2*	Not recommended
Ceylon	443rd mtg., 13.9	9 2*	Not recommended
Albania.	445th mtg., 15.9	2 1 8	Not recommended

c/ See footnote 132 above.

d/ No vote was taken on this application as such. A USSR draft resolution to refer the application to the Council's Committee on Admission of New Members was rejected at the 410th meeting on 16 February 1949. There were 2 votes in favour, 8 against and 1 abstention.

<u>Applications and draft resolutions</u>	<u>Meeting and date</u>	<u>Vote</u>		<u>Result of proceedings</u>
		<u>For</u>	<u>Against</u>	<u>Abstention</u>
<u>1949</u> (cont'd.)				
Mongolian People's Republic	445th mtg., 15.9	2	2*	7
Bulgaria	445th mtg., 15.9	3	1	7
Romania	445th mtg., 15.9	3	1	7
Hungary	445th mtg., 15.9	3	1	7
Draft resolution to recommend the admission of Albania, the Mongolian People's Republic, Bulgaria, Romania, Hungary, Finland, Italy, Portugal, Ireland, Jordan, Austria, Ceylon and Nepal (S/1340/Rev.2)	445th mtg., 15.9	4	2	4 e/
<u>1950</u>				
Indonesia	503rd mtg., 26.9	10	0	1 f/
<u>1951</u>				
No votes				
<u>1952</u>				
Italy	573rd mtg., 6.2	10	1*	0
Draft resolution recommending the simultaneous admission of Albania, the Mongolian People's Republic, Bulgaria, Romania, Hungary, Finland, Italy, Portugal, Ireland, Jordan, Austria, Ceylon, Nepal and Libya (S/2449/Rev.1)	573rd mtg., 6.2	2	6*	3

e/ One member of the Council did not participate in the vote.

f/ See footnote 132 above.

<u>Applications and draft resolutions:</u>	<u>Meeting and date</u>	<u>Vote For Against Abstention</u>	<u>Result of proceedings</u>
1952 (cont'a.)			
Draft resolution recommending the simultaneous admission of Albania, the Mongolian People's Republic, Bulgaria, Romania, Hungary, Finland, Italy, Portugal, Ireland, Jordan, Austria, Ceylon, Nepal and Libya (S/2664)	597th mtg., 8.9	2 5* 4	Not adopted
Libya	600th mtg., 16.9	10 1*	Not recommended
Japan	602nd mtg., 18.9	10 1*	Not recommended
Viet-Nam	603rd mtg., 19.9	10 1*	Not recommended
Laos	603rd mtg., 19.9	10 1*	Not recommended
Cambodia	603rd mtg., 19.9	10 1*	Not recommended
Democratic Republic of Viet-Nam	603rd mtg., 19.9	1 10*	Not recommended

1953-1954

No votes

II. GENERAL ASSEMBLY (plenary only)

<u>Draft resolutions recommended by the relevant Committee, or submitted directly to the plenary</u>	<u>Meeting and date</u>	<u>Vote For Against Abstention</u>	<u>Result of proceedings</u>
1946			
Draft resolution (A/179), recommended by the First Committee, providing that the General Assembly take note of the applications submitted by Afghanistan, Iceland, and Sweden, of the recommendations of the Security Council for their	47th mtg., 9.11	Unanimous	Resolution 34 (1)*

g/ Resolutions which have effected admission of new Members are marked with an asterisk.

<u>Draft resolutions recommended by the relevant Committee, or submitted directly to the plenary</u>	<u>Meeting and date</u>	<u>Vote For Against Abstention</u>	<u>Result of proceedings</u>
<u>1946 (cont'd.)</u> admission to membership in the United Nations and of the report by the First Committee unanimously approving those Security Council recommendations; and to decide, therefore, that Afghanistan, Iceland, and Sweden "be admitted to membership in the United Nations".			
Draft resolution (A/185), recommended by the First Committee, recommending that the Security Council re-examine the applications of Albania, Mongolian People's Republic, Transjordan (Jordan), Ireland and Portugal on their respective merits as measured by the yardstick of the Charter, in accordance with Article 4.	49th mtg., 19.11	Unanimous	Resolution 35 (I)
Draft resolution (A/264), recommended by the General Committee, providing that the General Assembly take note of the application of Siam (Thailand) and of the recommendations of the Security Council on the admission of Siam, and to decide that Siam be admitted to membership.	67th mtg., 15.12	Unanimous	Resolution 101 (I)*
<u>1947</u> Draft resolution (A/399), recommended by the First Committee, to take note of the recommendation of the Security Council on the applications of Yemen and Pakistan and to decide to admit these two States.	92nd mtg., 30.9	Unanimous	Resolution 108 (II)*

<u>Draft resolutions recommended by the relevant Committee, or submitted directly to the plenary</u>	<u>Meeting and date</u>	<u>Vote For Against Abstention</u>	<u>Result of proceedings</u>
1947 (cont'd.)			
Draft resolution (A/471), recommended by the First Committee, recommending that the permanent members of the Security Council consult with a view to reaching agreement on the admission of applicants not recommended up to then, and submit the conclusions to the Security Council.	118th mtg., 17.11	46 1 5	Resolution 113 A (II)
Draft resolution (A/471), recommended by the First Committee requesting an advisory opinion of the International Court of Justice.	118th mtg., 17.11	40 8 2	Resolution 113 B (II)
Draft resolution (A/471), recommended by the First Committee requesting the Security Council to reconsider the application of Ireland in the light of the determination by the General Assembly that Ireland was qualified and should be admitted.	118th mtg., 17.11	43 8 1	Resolution 113 C (II)
Similar draft resolution (A/471), concerning Portugal.	118th mtg., 17.11	40 9 3	Resolution 113 D (II)
Similar draft resolution (A/471), concerning Transjordan (Jordan).	118th mtg., 17.11	44 8 0	Resolution 113 E (II)
Similar draft resolution (A/471), concerning Italy.	118th mtg., 17.11	43 8 1	Resolution 113 F (II)
Similar draft resolution (A/471), concerning Finland.	118th mtg., 17.11	44 8 0	Resolution 113 G (II)

<u>Draft resolutions recommended by the relevant Committee, or submitted directly to the plenary</u>	<u>Meeting and date</u>	<u>Vote</u> <u>For Against Abstention</u>	<u>Result of proceedings</u>
1947 (cont'd.)			
Draft resolution (A/471), recommended by the First Committee requesting the Security Council to reconsider the application of Austria in the light of the General Assembly opinion that Austria was a peace-loving State within the meaning of Article 4.	118th mtg., 17.11	43 8 1	Resolution 113 H (II)
1948			
Draft resolution by the President of the General Assembly, taking note of the application of Burma and the recommendation of the Security Council, and deciding to admit Burma.	131st mtg., 19.4	Unanimous	Resolution 188 (S-2)*
Draft resolution (A/761), recommended by the Ad Hoc Political Committee, recommending that each member of the Security Council and the General Assembly, in exercising its vote on admission, act in accordance with the advisory opinion of the International Court of Justice of 28 May 1948.	177th mtg., 8.12	32 10 2	Resolution 197 A (III)
Draft resolution (A/761), recommended by the Ad Hoc Political Committee, asking the Security Council to reconsider, taking into account the circumstances in the particular cases, the applications of the States mentioned in the special reports of the Security Council.	177th mtg., 8.12	33 0 10	Resolution 197 B (III)

<u>Draft resolutions recommended by the relevant Committee, or submitted directly to the plenary</u>	<u>Meeting and date</u>	<u>Vote</u> <u>For Against Abstention</u>	<u>Result of</u> <u>Proceedings</u>
1948 (cont'd.)			
Draft resolution (A/761), recommended by the Ad Hoc Political Committee, requesting the Security Council to re-examine the question of the admission of Italy and Finland in the light of the advisory opinion of the International Court of Justice.	177th mtg., 8.12	11 15 17 b/	Rejected
Draft resolution (A/761), recommended by the Ad Hoc Political Committee recommending the Security Council to reconsider the application of Portugal in the light of the General Assembly determination and the advisory opinion of the International Court of Justice.	177th mtg., 8.12	39 6 1	Resolution 197 C (III)
Similar draft resolution (A/761), concerning Transjordan (Jordan).	177th mtg., 8.12	40 6 1	Resolution 197 D (III)
Similar draft resolution (A/761), concerning Italy.	177th mtg., 8.12	37 6 1	Resolution 197 E (III)
Similar draft resolution (A/761), concerning Finland.	177th mtg., 8.12	38 6 1	Resolution 197 F (III)
Similar draft resolution (A/761), concerning Ireland.	177th mtg., 8.12	38 6 1	Resolution 197 G (III)
Draft resolution (A/761), recommended by the Ad Hoc Political Committee, requesting the Security Council to	177th mtg., 8.12	37 6 2	Resolution 197 H (III)

b/ The original sponsor in the Committee had requested that this draft resolution be withdrawn because of the approval of other draft resolutions concerning these applicants.

<u>Draft resolutions recommended by the relevant Committee, or submitted directly to the plenary</u>	<u>Meeting and date</u>	<u>Vote</u> <u>For Against Abstention</u>	<u>Result of proceedings</u>
1948 (cont'd.)			
reconsider the application of Austria in the light of the opinion of the General Assembly that Austria was a peace-loving State within the meaning of Article 4, and of the advisory opinion of the International Court of Justice.			
Draft resolution (A/761), recommended by the Ad Hoc Political Committee, as amended in plenary, requesting the Security Council to reconsider the application of Ceylon in the light of the resolution and the discussions in the <u>Ad Hoc Political Committee</u> .	177th mtg., 8.12	41 6 0	Resolution 197 I (III)
1949			
Draft resolution (A/855), recommended by the Ad Hoc Political Committee, referring to the recommendation of the Security Council and recalling certain General Assembly resolutions and declarations by Israel, deciding that Israel is a peace-loving State accepting, and able and willing to carry out the obligations of the Charter, and deciding to admit Israel.	207th mtg., 11.5	37 12 9	Resolution 273 (III)*
Draft resolution (A/1066), recommended by the Ad Hoc Political Committee, requesting the Security Council to reconsider the application of Austria in the light of the General Assembly determination that Austria was qualified for admission.	252nd mtg., 22.11	51 5 2	Resolution 296 A (IV)

<u>Draft resolutions recommended by the relevant Committee, or submitted directly to the plenary</u>	<u>Meeting and date</u>	<u>Vote</u> <u>For</u> <u>Against</u> <u>Abstention</u>	<u>Result of proceedings</u>
1949 (cont'd.)			
Similar draft resolution (A/1066), concerning Ceylon.	252nd mtg., 22.11	53 5 1	Resolution 296 B (IV)
Similar draft resolution (A/1066), concerning Finland.	252nd mtg., 22.11	53 5 1	Resolution 296 C (IV)
Similar draft resolution (A/1066), concerning Ireland.	252nd mtg., 22.11	51 5 1	Resolution 296 D (IV)
Similar draft resolution (A/1066), concerning Italy.	252nd mtg., 22.11	51 6 1	Resolution 296 E (IV)
Similar draft resolution (A/1066), concerning Jordan.	252nd mtg., 22.11	50 5 2	Resolution 296 F (IV)
Similar draft resolution (A/1066), concerning the Republic of Korea.	252nd mtg., 22.11	50 6 3	Resolution 296 G (IV)
Similar draft resolution (A/1066), concerning Portugal.	252nd mtg., 22.11	53 5 1	Resolution 296 H (IV)
Similar draft resolution (A/1066), concerning Nepal.	252nd mtg., 22.11	52 5 1	Resolution 296 I (IV)
Draft resolution (A/1066), recommended by the <u>Ad Hoc Political Committee</u> re- questing an advisory opinion from the International Court of Justice.	252nd mtg., 22.11	42 9 6	Resolution 296 J (IV)

<u>Draft resolutions recommended by the relevant Committee, or submitted directly to the plenary</u>	<u>Meeting and date</u>	<u>Vote</u>		<u>Result of proceedings</u>
		<u>For</u>	<u>Against</u>	<u>Abstention</u>
<u>1949 (cont'd.)</u>				
Draft resolution (A/1066), recommended by the Ad Hoc Political Committee, requesting that the permanent members of the Security Council refrain from the use of the veto in connexion with the recommendations for admission, and requesting the Security Council to keep under consideration, in the light of Article 4 (1), all pending applications.	252nd mtg., 22.11	42	5	11
				Resolution 296 K (IV)
USSR draft resolution (A/1079), recommending that the Security Council reconsider the applications of Albania, the Mongolian People's Republic, Bulgaria, Romania, Hungary, Finland, Italy, Portugal, Ireland, Jordan, Austria, Ceylon and Nepal.	252nd mtg., 22.11	12	32	13
				Rejected
<u>1950</u>				
Draft resolution by Australia and India (A/1403), noting the recommendation of the Security Council and deciding to admit the Republic of Indonesia.	289th mtg., 28.9			Unanimous
				Resolution 491 (V)*
USSR draft resolution (A/1577), recommending that the Security Council review the application of 13 listed States.	289th mtg., 28.9	18	22	15
				Rejected

<u>Draft resolutions recommended by the relevant Committee, or submitted directly to the plenary</u>	<u>Meeting and date</u>	<u>Vote</u>		<u>Result of proceedings</u>
		<u>For</u>	<u>Against</u>	<u>Abstention</u>
<u>1950 (cont'd.)</u>				
El Salvador draft resolution (A/1585), as amended, to urge the Security Council to reconsider the applications of Austria, Ceylon, Finland, Ireland, Italy, Jordan, the Republic of Korea, Portugal and Nepal and to allow the Governments of those countries, pending admission, an opportunity to send observers to the General Assembly and its Committees.	289th mtg., 28.9	13	19	13
				Rejected
Joint draft resolution (A/1571), requesting the Security Council to keep the pending applications under consideration in accordance with resolutions 296 A-I and K (IV).	318th mtg., 4.12	46	5	2
				Resolution 495 (V)
<u>1951</u>				
Draft resolution (A/1900), recommended by the Fourth Committee recommending that the Security Council give urgent consideration to the resolution with a view to recommending the immediate admission of Italy (in connexion with the full participation of Italy in the work of the Trusteeship Council).	352nd mtg., 7.12	54	5	1
				Resolution 590 (VI)

<u>Draft resolutions recommended by the relevant Committee, or submitted directly to the plenary</u>	<u>Meeting and date</u>	<u>Vote</u>			<u>Result of proceedings</u>
		<u>For</u>	<u>Against</u>	<u>Abstention</u>	
1952					
Draft resolution (A/2100), recommended by the First Committee, recommending that the Security Council reconsider all pending applications, basing its action exclusively on the conditions contained in the Charter and the facts establishing their existence, and requesting the permanent members of the Security Council to consult so as to assist the Security Council to come to positive recommendations.	370th mtg., 1.2	43	8	7	Resolution 506 A (VI)
Draft resolution (A/2100), recommended by the First Committee, recommending that the Security Council reconsider the applications of 13 listed States as well as consider the application of Libya.	370th mtg., 1.2	22	21	16	Not adopted because it did not obtain required two-thirds majority.
Draft resolution (A/2100), recommended by the First Committee, requesting the Security Council to report to the seventh session of the General Assembly on the status of applications still pending.	370th mtg., 1.2	36	5	14	Resolution 506 B (VI)
Draft resolution (A/2341 and Corr.1), recommended by the Ad Hoc Political Committee, establishing a Special Committee to study the question of the admission of States to membership in the United Nations.	410th mtg., 21.12	48	5	6	Resolution 620 A (VII)

<u>Draft resolutions recommended by the relevant Committee, or submitted directly to the plenary</u>	<u>Meeting and date</u>	<u>Vote</u>			<u>Result of proceedings</u>
		<u>For</u>	<u>Against</u>	<u>Abstention</u>	
1952 (cont'd.)					
Draft resolution (A/2341 and Corr.1), recommended by the Ad Hoc Political Committee requesting the Security Council to take note of the General Assembly determination that Japan was qualified for admission and should be admitted.	410th mtg., 21.12	50	5	4	Resolution 620 B (VII)
Similar draft resolution (A/2341 and Corr.1), concerning Viet-Nam.	410th mtg., 21.12	40	5	12	Resolution 620 C (VII)
Similar draft resolution (A/2341 and Corr.1), concerning Cambodia.	410th mtg., 21.12	38	5	14	Resolution 620 D (VII)
Similar draft resolution (A/2341 and Corr.1), concerning Laos.	410th mtg., 21.12	36	5	14	Resolution 620 E (VII)
Similar draft resolution (A/2341 and Corr.1), concerning Libya.	410th mtg., 21.12	51	5	3	Resolution 620 F (VII)
Similar draft resolution (A/2341 and Corr.1), concerning Jordan.	410th mtg., 21.12	49	5	3	Resolution 620 G (VII)
Polish draft resolution (A/L.142), as amended in plenary, recommending that the Security Council reconsider 14 listed applicant States in order to submit a recommendation on their admission.	410th mtg., 21.12	9	30	10	Rejected
1953					
Draft resolution (A/2520), recommended by the Ad Hoc Political Committee, establishing a Committee of Good Offices to explore the possibilities of finding a solution on the question of admission of new Members.	453rd mtg., 8.12	Unanimous			Resolution 718 (VIII)

ARTICLE 5

TEXT OF ARTICLE 5

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

NOTE

No decisions requiring treatment under this Article have been taken by the organs of the United Nations. Most of the statements containing references to this Article have been made in discussions concerned with the respective functions of the Assembly and the Council in relation to the clause "by the General Assembly upon the recommendation of the Security Council", which is similar to the language used in Article 4 (2). Some of the statements have been made in connexion with the qualifications of applicants under Article 4 (1).

ARTICLE 6

TEXT OF ARTICLE 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

NOTE

No decisions requiring treatment under this Article have been taken by the organs of the United Nations. Most of the statements containing references to this Article have been made in the course of debates in the General Assembly and its political committees and have dealt with the respective functions of the Assembly and the Council in relation to the clause "by the General Assembly upon the recommendation of the Security Council", which is similar to the language used in Article 4 (2). Some of these statements have been made in connexion with the qualifications of applicants under Article 4 (1).

Chapter III

ORGANS

ARTICLE 7

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TEXT OF ARTICLE 7

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

INTRODUCTORY NOTE

A. Principal organs

1. Article 7 (1) establishes the six principal organs of the United Nations. These organs are discussed in the studies in this Repertory dealing with the Articles of the Charter relating specifically to the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat.

B. Subsidiary organs

2. Article 7 (2) gives general authority to establish subsidiary organs "in accordance with the present Charter". Article 22 grants the General Assembly specific authority to set up "such subsidiary organs as it deems necessary for the performance of its functions". Article 29 grants identical powers to the Security Council. The studies in this Repertory relating to Articles 22 and 29 contain lists of the subsidiary organs established by the General Assembly and the Security Council respectively, and are concerned with the specific questions which have arisen in connexion with those subsidiary organs.

3. Article 68 prescribes that the Economic and Social Council "shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions". The Council is also empowered by rule 26 of its rules of procedure to set up "such committees as it deems necessary". A discussion of the various types of bodies established by the Council, and of the questions related to them is to be found in this Repertory under Article 68. Reference should also be made to the study in this Repertory relating to Article 72, which deals with the rules of procedure of the Council.

4. The Trusteeship Council has established a number of committees in accordance with rule 66 of its rules of procedure. These committees are dealt with in this Repertory under Article 90, which empowers the Trusteeship Council to adopt its own rules of procedure.

5. As regards the Secretariat, the Secretary-General, in performing his duties under the Charter, has found it necessary on several occasions to establish bodies for the purpose of advising him and making recommendations on a variety of subjects. The Review Board, established by the Secretary-General to advise him on permanent

appointments, is an example of such a body. In other cases, the Secretary-General has been required by a principal organ to establish advisory bodies. For example, the General Assembly, by resolution 13 (I), has required the Secretary-General to set up an International Civil Service Commission to advise on methods and standards of recruitment.

6. In addition to the principal organs, some subsidiary organs have been empowered to set up their own subsidiary bodies. For example, the Conciliation Commission for Palestine, a subsidiary organ of the General Assembly, was authorized by General Assembly resolution 194 (III) to appoint such subsidiary bodies and to employ such technical experts as it deemed necessary; the Executive Board of the United Nations International Children's Emergency Fund (UNICEF), another subsidiary organ of the General Assembly, was empowered by General Assembly resolution 57 (I) to set up such committees as it deemed advisable.

7. There are a number of questions, such as that of the powers of decision granted to subsidiary organs, and that of the binding effect of decisions of subsidiary organs, which, although they have arisen in connexion with subsidiary organs of the General Assembly, concern other subsidiary organs as well. These, and other questions, are treated in this Repertory under Article 22. The scope of the present study is therefore limited primarily to a discussion of the nature of subsidiary organs in general.

8. The Analytical Summary of Practice considers first the term "subsidiary organs" as applied to such bodies as commissions, committees and, in particular, the Main Committees of the General Assembly. Then the characteristics of subsidiary organs are considered, a broad indication being given of the differences and common features among the various types of subsidiary organs. Finally, the Analytical Summary of Practice deals with certain organs established by treaty, which are within the framework of the United Nations, but possess some features differentiating them from the subsidiary organs. It does not deal with the Military Staff Committee, established under Article 47 of the Charter, which is treated in this Repertory under that Article.

ANALYTICAL SUMMARY OF PRACTICE

A. Nature of subsidiary organs

1. Subsidiary organs, committees and commissions

9. The term "subsidiary organ" does not appear to have been defined by any organ of the United Nations. In the practice of the United Nations such expressions as "Commissions", "committees", "subsidiary organs", "subsidiary bodies" and "subordinate bodies" have been used interchangeably. ^{1/} For the purpose of the present study all such bodies will be treated as falling within the scope of the term "subsidiary organs" in Article 7.

^{1/} For example, General Assembly resolution 207 (III) refers to "the functional commissions and other subsidiary bodies of the Economic and Social Council"; General Assembly resolution 409 B (V) refers to "subsidiary organs" and General Assembly resolution 409 C (V) to "subordinate bodies" of the Council. General Assembly resolution 231 (III), appendix A, lists as subsidiary organs such bodies as advisory committees to the General Assembly, commissions of the Economic and Social Council, visiting missions of the Trusteeship Council, committees of experts advisory to the Secretary-General, commissions of inquiry or conciliation et cetera.

10. There is some, although not conclusive, indication that the Main Committees of the General Assembly may not have been considered as subsidiary organs but rather as an integral part of the Assembly. For example, a distinction has been made in the rules of procedure of the Assembly between Committees and subsidiary organs. Chapter XIII of the rules is entitled "Committees"; chapter XVII, entitled "Subsidiary organs of the General Assembly", contains a single rule (present rule 162) which provides that the rules relating to the procedure of committees of the General Assembly shall apply to the procedure of any subsidiary organ, unless the General Assembly or the subsidiary organ decides otherwise.

11. During the discussions at the second session 2' of the General Assembly concerning the adoption of this rule, representatives in the Sixth Committee objected to the recommendation 3/ that the rule be placed in a separate chapter of the rules of procedure. It was stated that this would be tantamount to a decision that committees were not subsidiary organs of the General Assembly and no such distinction had been made by the Charter. If a committee continued to function between two sessions of the General Assembly, it in all probability became a subsidiary organ. An amendment 4/ was accordingly offered to transfer the rule to the end of the chapter of the rules dealing with committees. Against this, it was argued that a committee was not usually a subsidiary organ, but was part of the Assembly itself. The amendment to transfer the rule was rejected by the Sixth Committee by 25 votes to 8.

12. The question was raised again at the fourth session. 5' In its report 6, to the General Assembly, the Special Committee on Methods and Procedures had proposed an amendment to the rule regarding the discussion of committee reports to the effect that questions on which a Main Committee had submitted a report should not be discussed in plenary meeting unless, after a vote taken without debate, at least one-third of the Members present and voting indicated that they considered discussion necessary. 7/ Some representatives opposed the amendment on the ground that, under the Charter, the Main Committees were subsidiary bodies, and the General Assembly was supposed to assess or reassess their work. The proposed limitation on discussion in plenary meeting of the Committees' reports would change those subsidiary organs into principal organs by preventing the Assembly from reviewing their work. Against this it was contended that the Main Committees were not auxiliary organs, but were integral parts of the Assembly, being identical with it in composition. Whether the Assembly sat in plenary meeting or in committee, it remained the Assembly. The amendment, with some minor modifications, was adopted by the General Assembly by 28 votes to 24, with 3 abstentions. 8/

13. At the thirteenth session of the Economic and Social Council, a similar question relating to the role of the committees of the whole was discussed, in connexion with proposals 9/ to limit discussion anew in plenary meeting of an item already discussed by a committee of the whole. In opposition to the proposed limitations it was stated 10/ that the committees were merely subsidiary bodies to which the Council could

2/ G A (II), 6th Com., 57th mtg., pp. 142-144.

3/ G A (II), 6th Com., annex 4 c (A/C.6/182/Corr.1/Corr.2), pp. 270 and 271, rule 149 A.

4/ G A (II), 6th Com., pp. 273 and 274, annex 4 g (A/C.6/186), para. 12.

5/ G A (IV), 6th Com., 147th mtg., paras. 31, 48 and 57.

6/ G A (IV), Suppl. No. 12 (A/937), para. 27.

7/ See also in this Repertory under Article 21.

8/ G A (IV), Plen., 236th mtg., para. 147.

9/ E/AC.24/L.58 and E/AC.24/L.65.

10/ E/AC.24/SR.97, page 6.

not delegate its own functions and responsibilities. The proposals were eventually rejected. ¹¹

2. Characteristics of subsidiary organs

14. Subsidiary organs of the United Nations vary widely with respect to their membership, structure, scope of activity, powers, method of reporting, and duration.

a. MEMBERSHIP

15. Subsidiary organs are frequently composed of States. Their membership may include all Member States, as in the case of the Interim Committee of the General Assembly, ¹²/ a number of specified Member States, as in the case of special or *ad hoc* committees or, as in the case of the Executive Board of UNICEF, ¹³/ certain non-member States as well. Other subsidiary organs are composed of individuals; for instance, the functions of an organ of the United Nations are vested in the office of the United Nations Mediator in Palestine, ¹⁴/ consisting of a single person, while a number of experts, appointed in their individual capacity, constitute the Investments Committee, ¹⁵/ In some instances, as in the case of the Technical Assistance Board, ¹⁶/ a subsidiary organ is composed of the executive heads, or their representatives, of the United Nations and specialized agencies.

b. STRUCTURE

16. The majority of subsidiary organs are committees or commissions which function only when in session and lack any permanent or interim machinery. Some subsidiary organs, however, notably the "operational agencies", ¹⁷/ function on a continuing basis, with an organizational structure comprising an executive head and staff and one or more governmental committees or boards exercising policy-making or advisory powers with respect to the programmes carried out by the agencies. ¹⁸/ Others, such as the regional commissions of the Economic and Social Council and the political commissions set up by the General Assembly or by the Security Council, have some features common to both types of structure.

¹¹/ See also in this Repertory under Article 72.

¹²/ G A resolutions 111 (II), 196 (III) and 295 (IV).

¹³/ G A resolutions 57 (I) and 802 (VIII).

¹⁴/ G A resolution 186 (S-2).

¹⁵/ G A resolution 82 (I), annex 1, section 25.

¹⁶/ E S C resolution 222 (IX).

¹⁷/ These include the United Nations Children's Fund (UNICEF), established under General Assembly resolution 57 (I), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), established under General Assembly resolution 302 (IV), the United Nations Korean Reconstruction Agency (UNKRA), established under General Assembly resolution 410 (V), the United Nations High Commissioner for Refugees, an office established under General Assembly resolution 428 (V), and the Technical Assistance Board (TAB), established under Economic and Social Council resolution 222 (IX).

¹⁸/ For further reference to UNICEF, UNRWA, UNKRA and the High Commissioner for Refugees in this connexion, see in this Repertory under Article 22. For further reference to TAB, see in this Repertory under Articles 66 (2) and 68.

C. SCOPE OF ACTIVITIES

17. Some subsidiary organs, such as the Collective Measures Committee, 19/ have been set up for the purpose of preparing studies to be submitted to a principal organ. Others, as, for example, the United Nations Commission for India and Pakistan 20/ have been given functions of a political nature, such as mediation and conciliation. Subsidiary organs have been established to assist the General Assembly in the discharge of its financial and budgetary responsibilities; the Advisory Committee on Administrative and Budgetary Questions 21/ belongs to this category. Some organs, principally the Commission on Human Rights, have the function of promoting the recognition of different aspects of human rights. Others, the "operational agencies", have been charged with the execution of programmes of relief and rehabilitation. While the scope of activity of some organs, such as the functional commissions, is world-wide, others, notably the regional commissions, operate in a limited area. Finally, the Administrative Tribunal 22/ and the United Nations Tribunals in Libya 23/ and Eritrea 24/ have judicial functions. 25/

d. POWERS

18. The powers of many subsidiary organs are limited to reporting and making recommendations to a principal organ, while others, such as the regional economic commissions, may make recommendations directly to Governments and specialized agencies. Some organs are empowered to make final decisions in such matters as the allocation of funds (for example, the Executive Board of UNICEF), the adoption of rules of procedure (for example, the United Nations Special Committee on the Balkans established by General Assembly resolution 109 (II)), the establishment of their own subsidiary organs (for example, the Conciliation Commission for Palestine established by General Assembly resolution 194 (III)) and the calling of an international conference (the Disarmament Commission established by General Assembly resolution 502 (VI)). Certain organs, such as UNICEF, have the power to make agreements with Governments, to enter into contracts, to sue and to take any other legal action required in the performance of their functions. The Administrative Tribunal, a subsidiary organ of the General Assembly, has the power to make decisions binding upon the Organization.

e. METHOD OF REPORTING

19. Normally, subsidiary organs report to, and are directed by, the principal organ which has established them. In some cases, however, subsidiary organs report to, and receive directives from, another principal organ. For example, the Atomic Energy Commission, which was established by General Assembly resolution 1 (I), reported to the Security Council. In other instances, subsidiary organs report jointly to the

19/ G A resolution 377 D (V).

20/ S C resolution of 20 January 1948, S C, 3rd yr., Nos. 1-15, 230th mtg., pp. 130 and 131.

21/ G A resolutions 14 A (I) and 15 (I).

22/ G A resolution 351 (IV).

23/ G A resolution 388 (V).

24/ G A resolution 530 (VI).

25/ The International Court of Justice, in its Advisory Opinion entitled "Effect of Awards of Compensation made by the United Nations Administrative Tribunal", I C J. Reports 1954, p. 61, has stated: "There can be no doubt that the Administrative Tribunal is subordinate in the sense that the General Assembly can abolish the Tribunal by repealing the Statute, that it can amend the Statute and provide for review of the future decisions of the Tribunal and that it can amend the Staff Regulations and make new ones."

parent organ and another principal organ. For example, the office of the High Commissioner for Refugees, a subsidiary organ of the General Assembly, has been required to report to the Assembly through the Economic and Social Council and to follow policy directives laid down by the Assembly or by the Council.

f. DURATION

20. Some subsidiary organs, such as the Advisory Committee on Administrative and Budgetary Questions, have been established on a "permanent" or standing basis, without indication of duration. They continue in existence indefinitely, unless specifically abolished. The sessional committees, for example the Main Committees of the General Assembly and the committees of the Economic and Social Council function during the sessions of the principal organ concerned. Frequently, subsidiary organs are created on an *ad hoc* basis, for a limited time or for the accomplishment of a particular purpose, and are generally required to report to the principal organ concerned at a subsequent session.

3. Common features

21. Despite the wide range of differences, there appear to be some features common to all subsidiary organs. These are:

- (a) A subsidiary organ is created by, or under the authority of, a principal organ of the United Nations;
- (b) The membership, structure and terms of reference of a subsidiary organ are determined, and may be modified by, or under the authority of, a principal organ;
- (c) A subsidiary organ may be discontinued by, or under the authority of, a principal organ.

B. Organs established by treaty

22. There are examples of organs existing within the framework of the United Nations, which have some features differentiating them from the subsidiary organs mentioned in the preceding paragraphs. These include the Permanent Central Opium Board (PCOB), ^{26/} the Drug Supervisory Body, ^{27/} and the International Bureau for Declarations of Death. ^{28/} The Appeals Committee, to be established when the Opium Protocol of 1953 ^{29/} comes into force, will be a similar organ. The PCOB and the Drug Supervisory

^{26/} Established by the Agreement Concerning the Manufacture of, Internal Trade in, and use of Prepared Opium signed on 11 February 1925, as amended by the Protocol of 1946 approved by General Assembly resolution 54 (I) (United Nations Publication, Sales No.: 1950.V.1).

^{27/} Established by the International Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed on 13 July 1931, as amended by the Protocol of 1946 approved by General Assembly resolution 54 (I).

^{28/} Established by the Secretary-General under the terms of the Convention on the Declaration of Death of Missing Persons, signed on 6 April 1950 (United Nations Publication, Sales No.: 1950.V.1).

^{29/} Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of International and Wholesale Trade in, and Use of Opium, signed on 23 June 1953 (United Nations Publications, Sales No.: 1953.XI.6).

Body have been considered as "organs of the United Nations" for the purpose of General Assembly resolution 774 (VIII), 30/ and they appear to have been regarded as "other organs", as distinguished from "subsidiary bodies", in General Assembly resolution 875 C (IX).

23. While the subsidiary organs referred to in the section entitled "Nature of subsidiary organs" of the present study have been created by decision of an organ of the United Nations, the bodies referred to in this section have been established by, or under the authority of, a treaty. They differ, therefore, from the above-named subsidiary organs in that their terms of reference, having been laid down by treaty, cannot be modified by a principal organ of the United Nations. On the other hand, they are generally subject to the administrative procedures of the United Nations. For example, their expenses are included in the budget of the United Nations, their staffs are appointed by the Secretary-General 31/ and, in this sense, they may be considered as part of the Organization.

30/ See also G A (VIII), Annexes, a.i. 68, p. 2, A/2516, para. 9. It should also be noted that, before the establishment of the United Nations, the PCOB had apparently been regarded as an organ of the League of Nations. (See League of Nations document O.C. 669 of 1 October 1927, Advisory Committee on Traffic in Opium and other Dangerous Drugs, Report of Sub-Committee on the relations of the Advisory Committee and the Central Board.)

31/ In the case of the PCOB, the secretary and staff are appointed by the Secretary-General on the nomination of the Board and subject to the approval of the Economic and Social Council (article 20 of the Convention of 1925 as amended by the Protocol of 1946). The secretariat of the PCOB acts also as secretariat of the Drug Supervisory Body.

ARTICLE 8

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TEXT OF ARTICLE 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

INTRODUCTORY NOTE

1. Article 8 is an application of the general principle that there should be no discrimination based on sex, a principle which is stated in several other provisions of the Charter. 1/

2. The present study contains an analysis of those decisions of the various organs of the United Nations relating to the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs and also a summary of the application and interpretations of Article 8, as evolved in the discussions and decisions of the Economic and Social Council and in the resolutions of the Commission on the Status of Women.

I. GENERAL SURVEY

3. The General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council have placed no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in their own sessions or in those of their subsidiary organs. 2/ The Staff Regulations of the United Nations governing the selection and conditions of work of the United Nations Secretariat and the Staff Rules implementing these Regulations include references to the principle embodied in Article 8. Statistics concerning the relative numbers of men and women participating in the various organs of the United Nations and detailed description of regulations relating to equal conditions of work in the United Nations Secretariat can be found in the memoranda 3/ submitted by the Secretary-General to the Commission on the Status of Women at five consecutive sessions.

1/ Preamble, second para.; Article 1 (3); Article 55 (c); Article 76 (c).

2/ The qualifications of members of the International Court of Justice are established in Article 2 of the Statute of the International Court of Justice which refers to "persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law". No woman has been elected or nominated for election as a member of the Court.

3/ E/CN.6/132, E/CN.6/167 and Corr.1, E/CN.6/180, E/CN.6/216 and E/CN.6/246 and see paras. 11-20 below.

4. Women have participated in the work of all of the principal organs of the United Nations, with the exception of the International Court of Justice. ^{4/}

5. The scope and meaning of Article 8 has been discussed at several sessions of the Economic and Social Council. At its seventh session the Council adopted a recommendation ^{5/} to Member States concerning the appointment of women to their delegations; a draft resolution containing a similar recommendation to Member States failed of adoption at the eleventh session of the Council, as it was then felt that the composition of delegations was entirely a matter for the Governments concerned. ^{6/} As far as the selection and conditions of work of members of the United Nations Secretariat are concerned, the Economic and Social Council at its seventh, eleventh and thirteenth sessions (held in 1948, 1950 and 1951 respectively) considered but did not adopt draft resolutions recommended by the Commission on the Status of Women containing recommendations to the Secretary-General. ^{7/} Subsequent to the thirteenth session of the Economic and Social Council, the Commission on the Status of Women at its sixth and seventh sessions adopted resolutions addressed directly to the Secretary-General and containing recommendations on the participation and conditions of work of women in the Secretariat.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Participation of men and women in the United Nations Secretariat

6. The Staff Regulations and the Staff Rules of the United Nations Secretariat, which govern the selection of staff, contain provisions concerning the participation of men and women.

1. Provisions concerning participation in any capacity

7. Regulation 10 of the Staff Regulations adopted in Annex II of General Assembly resolution 13 (I) provided that: "Men and women are equally eligible for all posts in the Secretariat."

8. The Staff Rules implementing the Staff Regulations contained a similar provision in rule 53: ^{8/} "Men and women shall be equally eligible for all posts."

9. Staff Regulations superseding all previous regulations were adopted by the General Assembly in resolution 590 (VI); regulation 4.3 reads, in part, as follows:

"In accordance with the principles of the Charter, selection of staff members shall be made without distinction as to race, sex, or religion."

^{4/} The treatment of the staff of the Registry of the International Court of Justice is assimilated to that of the Secretariat of the United Nations; Article 18 (2) of the Rules of Court adopted on 6 May 1946 provides that the Regulations for the staff of the Registry shall conform as far as possible to the provisions of the Regulations for the staff of the United Nations. The Staff Regulations for the Registry include no provisions specifically implementing or interpreting Article 8.

^{5/} ESC resolution 154 B (VII).

^{6/} G A (V), Suppl. No. 3 (A/1345), para. 264.

^{7/} See paras. 21-24 below.

^{8/} SGB/81 and ST/AFS/SGB/81/Revs.1-3.

10. The Staff Rules in force as of 1 January 1953 and implementing the Staff Regulations no longer contain a provision concerning the eligibility of men and women for Secretariat posts.

2. Provisions concerning participation under conditions of equality 9/

11. In its Report on the Organization of the Secretariat, the Preparatory Commission of the United Nations noted that:

"Under Article 8 of the Charter, there can be no differentiation in rates of pay for men and women doing equivalent work." 10/

12. Neither the Staff Regulations adopted at the first session of the General Assembly nor those subsequently adopted at the sixth session contain express provisions referring to Article 8 in regard to equality of conditions of work for men and women.

13. Rule 222 of the Staff Rules implementing the first set of Staff Regulations 11/ reads as follows: 12/

"In these rules, terms referring to persons and staff members in the masculine gender shall apply also to women, except where the contrary intention is evident from the context."

14. Rule 112.1 of the Staff Rules 13/ presently in force is entitled Gender of Terms and reads as follows:

"In these rules reference to staff members in the masculine gender shall apply also to women, unless clearly inappropriate from the context."

15. Differences in the wording have occurred with reference to the spouses of staff members. The earliest instance of this difference occurs in the Report of the Preparatory Commission of the United Nations which noted that:

"the Organization should reimburse the removal costs and the travel expenses of staff members and their families upon appointment, upon change of official station, and upon termination of appointment. The Organization should also provide for travel expenses of staff members, their wives and dependent children, on home leave". 14/

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- 9/ Paras. 9-11 of the Pension Scheme Regulations for members of the International Court of Justice adopted in General Assembly resolution 86 (I) refer only to pensions payable to widows of members of the Court. The Travel and Subsistence Regulations of the International Court of Justice (I C J Series D, No. 1, pp. 94-97) are similarly phrased, and para. 6 employs the phrase "wife and/or dependent children".
- 10/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. VIII, para. 69.
- 11/ Draft Regulations adopted in annex II of G A resolution 13 (I).
- 12/ ST/AFS/SG/81/Rev.1/Corr.1.
- 13/ Implementing Staff Regulations adopted in G A resolution 590 (VI).
- 14/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. VIII, para. 73.

16. The phrase "wife and dependent children" was incorporated into Rules 80, 124 and 197 of the Staff Rules implementing the Staff Regulations adopted in General Assembly resolution 13(I), and referring to home leave and official travel. Rule 38 (concerning the Staff Assessment Plan) and Rule 114 (concerning the Repatriation Grant) employed the phrase "a wife, a dependent husband, or a dependent child". 15/

17. The Staff Rules in force as of 1 January 1953, which implement the Staff Regulations adopted in General Assembly resolution 590 (VI), define a dependent spouse as "a wife or dependent husband". 16/

18. Similar principles are embodied in Staff Rules 17/ applicable to personnel engaged in short-term service and to Technical Assistance project personnel.

19. Article VII of the Regulations of the United Nations Joint Staff Pension Fund 18/ referred to certain death benefits exclusively payable to the widow of a married male participant 19/. An amendment to Article VII was adopted by the General Assembly in resolution 772 (VIII) and provided that if the widower of a married woman participant were found "to be totally and permanently incapable either physically or mentally of providing for his own support, at the time of her death, he shall be entitled to the same benefits as set forth in this article, as would a widow of a male participant". 20/ Article VIII of the Regulations also differentiates between the children of male or female participants in the payment of child's benefits in the event of death of the participant.

20. The Provisional Rules Governing Compensation to Staff Members in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations 21/ define "dependants" to mean and include only "a wife, dependent husband, dependent child, dependent parent, dependent brother or dependent sister".

3. Discussions concerning appointment and promotion of women and conditions of equality

21. The Commission on the Status of Women has made reference to Article 8 in resolutions adopted at its second, 22/ third, 23/ fourth, 24/ fifth, 25/ sixth, 26/

15/ The difference in terms was not interpreted as authorizing the payment of travel for the spouse of a woman staff member.

16/ For example, rule 107.5, Eligible Dependants (Travel and Removal Expenses); rule 103.17, Staff Assessment.

17/ ST/AFS/SGB/94/Add.2 and 3.

18/ Adopted by G A resolution 243 (III) and amended by resolution 630 (VII).

19/ Joint Staff Pension Board document JSPB/G.4, pp. 6 and 7.

20/ JSPB/G.4/Add.1, p. 2.

21/ ST/AFS/SGB/94/Add.1, art. 2 (d), p. 2.

22/ E S C (VI), Suppl. No. 5 (E/615), para. 16.

23/ E S C (IX), Suppl. No. 5 (E/1316-E/CN.6/124), para. 20.

24/ E S C (XI), Suppl. No. 6 (E/1712-E/CN.6/154), para. 43.

25/ E S C (XIII), Suppl. No. 10 (E/1997/Rev.1-E/CN.6/175/Rev.1), para. 116.

26/ E S C (XIV), Suppl. No. 6 (E/2208-E/CN.6/204), para. 88.

and seventh 27/ sessions urging the Secretary-General to assure equal opportunity to women in the Secretariat and to appoint them to senior posts; and has requested him to report on the subject. These requests were all addressed directly by the Commission to the Secretary-General, with the exception of that contained in a resolution recommended at the fifth session of the Commission for adoption by the Economic and Social Council; all were incorporated in the reports of the Commission to the Council.

22. The Economic and Social Council itself has never made any recommendations to the Secretary-General concerning the appointment of women to Secretariat posts. At the seventh session of the Council, its Human Rights Committee considered the report of the second session of the Commission on the Status of Women and decided 28/ to delete from a draft resolution submitted by the United States 29/ a request to the Secretary-General "to consider women equally with men for key appointments in the United Nations Secretariat"; 30/ the Human Rights Committee felt that such a request would be inappropriate and that there was no evidence that the Secretary-General was failing to fulfil the Charter provisions. At the eleventh session of the Council, its Social Committee discussed the Commission's reiterated request to the Secretary-General contained in the report of its fourth session, and decided to take no action on the matter other than to transmit the summary record of its discussion to the Advisory Committee on Administrative and Budgetary Questions. 31/ Furthermore, the view was expressed that the wording of the Commission's resolution raised questions which, under the terms of the Charter, fell within the discretion of the Secretary-General. At the thirteenth session of the Economic and Social Council, its Social Committee decided to take no action on a draft resolution containing similar provisions recommended by the Commission on the Status of Women in the report of its fifth session. During their consideration of the question, several members of the Social Committee of the Council were of the opinion that such a resolution might imply an interference with the discretion of the Secretary-General who ought to be free to appoint the best persons available. 32/

23. The reports requested by the Commission on the Status of Women on the number and proportion of women occupying posts in the Secretariat were submitted by the Secretary-General at the Commission's fourth, fifth, sixth, seventh, and eighth sessions. 33/ The Secretary-General, in his welcoming address at the eighth session of the Commission, in 1954, stated that under his administration the best persons available would be selected for Secretariat posts and that there would be no discrimination on the basis of sex or on any other ground contrary to the Charter or to the Universal Declaration of Human Rights. He suggested that future representations on the subject be channeled through the Fifth Committee of the General Assembly as the appropriate body to which the Secretary-General reports on matters of personnel administration. 34/

27/ ESC (XVI), Suppl. No. 2 (E/2401-E/CN.6/227), para. 92.

28/ E/AC.27/SR.5, p. 10.

29/ E/AC.7/W.25, para. 1.c.1.

30/ For the amendments to delete these words submitted separately by the delegations of Chile, United Kingdom, and USSR, see E/AC.27/W.12, E/AC.27/W.7 and E/AC.27/W.9, respectively.

31/ E/AC.7/SR.134, p. 11.

32/ E/AC.7/SR.195, pp. 16-21.

33/ E/CN.6/132, E/CN.6/167 and Corr.1, E/CN.6/180, E/CN.6/216 and E/CN.6/244.

34/ E/CN.6/SR.149, pp. 5 and 6.

24. At the same session, the Commission adopted a resolution 35/ by which it noted with satisfaction the statement of the Secretary-General and looked forward with confidence to an increasing number of women in policy-making or senior posts in the Secretariat.

B. Participation in other United Nations organs

25. At the seventh session of the Economic and Social Council in 1948, its Human Rights Committee considered various draft resolutions 36/ concerning the participation of women in governmental and international activity. The Human Rights Committee rejected 37/ a proposal 38/ submitted by Chile which first quoted Article 8 and then stated that:

"The principle underlying this provision /Article 8/ is, by its very nature, applicable to Members as regards their international representation, to all public activities and the exercise of the professions."

26. The prevailing view was that the purpose of Article 8 was strictly limited to the United Nations, and that Article 8 was not appropriate as a preamble to the operative paragraph in the draft resolution concerned with recommendations to Member States on access of women to public service and the professions.

27. The resolution ultimately recommended by the Economic and Social Council 39/ quoted Article 8 in the preamble, and the relevant operative paragraph recommended that Member States:

"Consider women equally with men when appointing their delegations to organs and agencies of the United Nations and to international bodies and conferences."

28. It should also be noted that the words "delegations to" had been substituted for the words "representatives on" during the discussions of the Human Rights Committee 40/. It was felt that the term "representatives" limited the scope of the resolution to the heads of delegations, if taken in connexion with Articles 9, 23 and 61 of the Charter (referring to representatives of Member States to the General Assembly, the Security Council and the Economic and Social Council); as used in the resolution, the term "delegations" was intended to cover all the members of delegations representing Member States at organs and agencies of the United Nations and at international bodies and conferences.

29. At its eleventh session in 1950 the Economic and Social Council referred to its Social Committee a draft resolution of the fourth (1950) session of the Commission on the Status of Women 41/ entitled "Participation of Women in the Work of the

35/ E S C (XVIII), Suppl. No. 6 (E/2571-E/CN.6/253), para. 88.

36/ E/AC.27/2, p. 2.

37/ E/AC.27/SR.7, pp. 3, 11 and 12.

38/ E/AC.27/W.12, pp. 2 and 3.

39/ E S C resolution 154 B (VII).

40/ E/AC.27/SR.7, p. 16.

41/ E S C (XI), Suppl. No. 6 (E/1712-E/CN.6/154), para. 48.

United Nations". Article 8 was quoted in the preamble to this draft resolution, which considered that "the appointment of delegations is within the jurisdiction of the Member States of the United Nations".

30. The relevant operative paragraph suggested that the Economic and Social Council draw the attention of Member States to the desirability of greater participation of women in delegations.

31. In its discussion of the draft resolution 42/, the Social Committee felt that the question of the participation of women in the delegations of Member States was entirely a matter for Governments. The Chairman of the Committee expressed doubts as to the admissibility of the draft resolution, and suggested that it would be wiser to be content with an exchange of views on the subject, and that the summary records of the discussion would automatically be brought to the attention of the various Governments through the circulation of the summary records. This suggestion was adopted. 43/ Article 8 was mentioned in the debate solely in connexion with the admission of women to posts in the United Nations Secretariat 44/. No further recommendations to Member States in connexion with Article 8 were proposed to the Economic and Social Council by the Commission on the Status of Women.

32. At its thirteenth session in 1951 the Council adopted resolution 385 E (XIII), in which it invited "Member States to nominate, and the Trusteeship Council to consider appointing, women to serve as members of visiting missions". This resolution was adopted at the request of the Commission on the Status of Women, and cited Chapter XIII of the Charter under which the Trusteeship Council is empowered to dispatch visiting missions to Trust Territories. Economic and Social Council resolution 385 E (XIII) was cited without further elaboration in resolution 427 (X) of the Trusteeship Council dealing with the organization and methods of functioning of visiting missions, in which the Trusteeship Council decided that the principles set forth in Economic and Social Council resolution 385 E (XIII) would be taken into account in making arrangements for future visits to the Trust Territories.

33. At its sixth and seventh sessions, held in 1952 and 1953 respectively, the Commission on the Status of Women adopted resolutions on participation of women in the work of the United Nations quoting Article 8 and requesting the Secretary-General to include in his reports on the number and proportion of women in the secretariats of the United Nations and of the specialized agencies, data on the number and proportion of women

"who have served as delegates and alternates for their countries in sessions of the General Assembly and in the permanent delegations to the United Nations, as well as on their participation in the principal organs and commissions of the United Nations, in the International Court of Justice and in conferences of the specialized agencies, since the San Francisco Conference." 45/

42/ E/AC.7/SR.134, pp. 9-11.

43/ E/AC.7/SR.134, p. 11.

44/ See para. 23 above.

45/ E S C (XIV), Suppl. No. 6 (E/2208-E/CN.6/204), para. 88. Similar wording was used in the seventh session resolution (ESC (XVI), Suppl. No. 2 (E/2401-E/CN.6/227), para. 92, with the addition of a request to include UNICEF in the above-mentioned list.

These reports 46/ were considered at the seventh (1953) and eighth (1954) sessions, respectively, of the Commission and were noted in the reports 47/ of the Commission to the Economic and Social Council; the Economic and Social Council at its sixteenth (1953) and eighteenth (1954) sessions took note of the reports of the Commission on the Status of Women 48/.

46/ E/CN.6/216 and Add.1, E/CN.6/246.

47/ E S C (XVI), Suppl. No. 2 (E/2401-E/CN.6/227), para. 92, and E S C (XVIII), Suppl. No. 6 (E/2571-E/CN.6/253), para. 88.

48/ E S C resolution 504 A (XVI) and see E/SR.805.

Chapter IV

THE GENERAL ASSEMBLY

ARTICLE 9

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TEXT OF ARTICLE 9

1. The General Assembly shall consist of all the Members of the United Nations.
2. Each Member shall have not more than five representatives in the General Assembly.

INTRODUCTORY NOTE

1. Article 9 of the Charter determines the composition of the General Assembly and provides for the representation of its Members.
2. The study of the Assembly's practice in the application of the Article consists of two sections. The first relates to paragraph 1 -- the membership of the Assembly. It touches briefly on the original and present membership of the General Assembly and on the reference, in terms of the Assembly's composition, which has been made to Article 9 in connexion with the constitutional aspects of the representation of one Member State. ^{1/}
3. The second section deals with matters arising out of paragraph 2 -- representatives of Members in the Assembly. Two types of questions are involved: on the one hand, those relating to the action taken by Members to implement the provisions of the Article, such as the composition of delegations and the accreditation of representatives; on the other, questions relating to the action taken by the Assembly itself, such as the procedure for the examination of credentials and the admission of representatives to a session.

I. GENERAL SURVEY

4. Article 9 deals with matters essentially organizational. Its application has taken place largely as a matter of course. It has given rise to little discussion of its terms.
5. The right of a State Member of the United Nations to membership in the General Assembly has never been disputed. The only question which has arisen thus far in regard to paragraph 1 relates to matters concerned with the composition of the Assembly. During the last four sessions of the General Assembly, certain Members have objected to the presence of the representatives of another Member who, it has been alleged, were not entitled to speak for that Member or to exercise its rights of membership.

^{1/} The general question of the representation of a Member has been dealt with, as appropriate and relevant, in the study of Article 10 in connexion with discussions on the agenda item "Recognition by the United Nations of the representation of a Member State".

6. With respect to the representatives of a Member in the Assembly, such questions as have arisen relate not to the substance of the provision of Article 9, which limits their number to a maximum of five, but rather to the representation of a Member State in connexion with the method for the examination of credentials. Rule 27 of the rules of procedure of the General Assembly deals with the submission by Members of the credentials of their representatives. Rule 28 requires that a Credentials Committee be appointed at the beginning of each session to examine and report on these credentials. Rule 29 provides for provisional admission of representatives to a session.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Practice relating to Article 9 (1)

7. Article 9 (1) provides that:

"The General Assembly shall consist of all the Members of the United Nations."

8. The first part of the first session of the General Assembly opened with fifty-one States as Members of the United Nations. ^{2/} Since that time, nine other States have been admitted to membership in the United Nations. ^{3/} In accordance with rules 137 and 139 of the rules of procedure, membership becomes effective on the date on which the Assembly decides to approve the application of a State. ^{4/}

9. While no question has arisen with respect to the provision that a Member of the United Nations is, automatically, a member of the General Assembly, objections of a constitutional nature have been made at several sessions regarding the composition of the Assembly in connexion with the representation of China. Article 9 was specifically referred to in the same connexion, for example, during the fifth session when this matter was first discussed (see para. 25 below) and the question of who has the right to occupy the seat of China in the General Assembly has been argued in the context of the rights and obligations of membership in the Assembly whenever the representation of this country has been discussed (see also paras. 41 and 43 below).

B. Practice relating to Article 9 (2)

1. *Composition of delegations to the General Assembly*

a. NUMBER OF REPRESENTATIVES

10. Article 9 (2) provides that:

"Each Member shall have not more than five representatives in the General Assembly."

The application of this provision is reflected and supplemented in rules 25 and 26 of the rules of procedure of the General Assembly which speak of "the delegation" of a Member.

^{2/} See also in this Repertory under Article 3.

^{3/} See also in this Repertory under Article 4.

^{4/} Ibid.

11. Rule 25 stipulates that a delegation shall consist of "not more than five representatives and five alternate representatives, and as many advisers, technical advisers, experts and persons of similar status as may be required by the delegation". Rule 26 further provides that an alternate representative may act as a representative upon designation by the Chairman of the delegation.

12. There has been no discussion regarding the application of the Charter provision whereby the number of representatives of each Member is limited to five, but in practice there has been a growing tendency among Members to appoint more than five representatives to a session. It would appear that in the majority of cases this tendency has developed as a consequence of the length of the sessions and the difficulties which Members find in maintaining the same representatives throughout an entire session. The provisions of Article 9 have, however, been safeguarded in that the necessary adjustments have been made within the delegations in each instance so that no Member has had more than five representatives acting simultaneously in that capacity at any session.

**B. ACCREDITATION BY GOVERNMENTS OF THEIR REPRESENTATIVES:
ISSUANCE OF CREDENTIALS**

13. The question of the issuance of credentials for representatives to the General Assembly -- by whom they might be signed and in what form they should be "issued" -- arose during the first special session of the General Assembly.

14. The Credentials Committee appointed for that session reported that credentials conferred upon representatives of twenty-two Governments fully satisfied the requirements of the rules of procedure and that provisional credentials had been submitted for representatives of the then remaining thirty-three States. The original credentials for these representatives, it was stated, would be examined at a later meeting of the Committee and, in the meantime, it was proposed that the representatives concerned should be seated provisionally with the same rights as other representatives. 5/

15. At that time, the rules of procedure provided that:

"The credentials of representatives, and the names of members of a Delegation shall be submitted to the Secretary-General if possible not less than one week before the date fixed for the opening of the session. The credentials shall be issued either by the Head of the State or by the Minister for Foreign Affairs."

16. The powers of diplomatic representatives who had been accredited as permanent representatives to the United Nations were referred to during the consideration of the Committee's report in plenary meeting in connexion with the Committee's finding on "provisional credentials". At that time it was maintained, as it had been in the Credentials Committee itself, that representatives permanently accredited to the Organization were legally qualified to represent their respective countries at all times at any meeting of any United Nations' organ. The rules of procedure dealing with credentials could not invalidate international usage with respect to national representation nor should they be so applied. This was particularly true in the case

5/ G A (S-1), Plen., 69th mtg., pp. 13 and 14.

of special sessions of the General Assembly which caused certain difficulties for some Governments because of the time element and the great distances involved. 6/

17. The general question of Permanent Missions to the United Nations was discussed during the first part of the third session. 7/ The Assembly adopted unanimously a resolution, 8/ paragraph 4 of which referred to the credentials of permanent representatives as follows:

"That Member States desiring their permanent representatives to represent them on one or more of the organs of the United Nations should specify the organs in the credentials transmitted to the Secretary-General,".

18. During the second session, the Assembly had before it the report of the Committee on Procedures and Organization 9/ which was referred to the Sixth Committee for consideration. Among the amendments proposed to the rules of procedure, the Committee on Procedures and Organization suggested a redrafting under which the second sentence of the rule relating to credentials (see para. 15 above) would be modified as follows:

"The credentials may take the form of a document signed by the Head of the State or of a note signed by the Minister for Foreign Affairs or the principal resident representative to the United Nations."

19. The amendments were considered in a sub-committee of the Sixth Committee which recommended that the proposed rule governing credentials should not be adopted but that the original rule should be retained with the addition of the words "or Government" after the word "State" in the second sentence. 10/

20. The recommendation of the sub-committee was approved without discussion in the Sixth Committee and, also without discussion, was subsequently adopted in plenary meeting. 11/

6/ G A (S-1), Plen., 69th mtg., see statements on pp. 14 and 15. The term "issued" was also mentioned, it being held that the rules of procedure did not require that the credentials should actually bear a signature; a cablegram sent by the Minister for Foreign Affairs to the Secretary-General was undoubtedly a document that had been issued in full compliance with the rule in question. N.B. In practice, cablegrams are considered as provisional credentials and are followed by full credentials submitted by Governments in accordance with the rules of procedure.

7/ G A (III/1), Plen., 169th mtg., pp. 680-682; 6th Com., 124th-127th mtgs., pp. 619-651. See also in this Repertory under Article 104 and Article 105.

8/ G A resolution 257 A (III).

9/ G A (II), Plen., vol. II, pp. 1455-1483, annex 4 (A/388).

10/ Reference to this amendment and the sub-committee's recommendation have been omitted from the relevant annex (G A (II), 6th Com., pp. 260-271, annex 4c). They are to be found in the mimeographed document A/C.6/182, pp. 14 and 15.

11/ G A (II), Plen., vol. II, 116th mtg., pp. 1098-1100; 6th Com., 56th and 57th mtgs., pp. 129-147.

C. REPRESENTATION OF A MEMBER STATE IN THE
GENERAL ASSEMBLY

21. The question of the representation of a Member State has been raised in the General Assembly in connexion with the representation of China. In discussing the question, references have been made to the constitution of the General Assembly, to the exercise of the right of membership and to the procedure for the examination of credentials.

22. On the first occasion, 12/ immediately following the opening of the fifth session, a draft resolution was submitted by India, the operative paragraphs of which were as follows:

"Decides that the aforesaid Central Government /of the People's Republic of China/ through its Head, or its Minister for Foreign Affairs, or its accredited representatives, as the case may be, shall be entitled to represent the Republic of China in the General Assembly and

"Recommends that the other organs of the United Nations adopt similar resolutions."

23. In presenting his proposal, 13/ the sponsor recognized that it was unusual for the Assembly to deal with a draft resolution at so early a stage but pointed out that the circumstances were also unprecedented since two sets of credentials had been received from two different authorities in respect of the representation of China and this would have to go before the Credentials Committee which was required to report without delay. Which of the two governments claiming to represent China was the Government entitled to issue credentials, was a question of unusual and unprecedented difficulty and had engaged the attention of other United Nations organs for several months without receiving a final answer. It was not to be expected that the Credentials Committee would be able to furnish this answer. It would be well for the Assembly itself to decide it at once or at least when the report of the Credentials Committee had been received because it was necessary to resolve as soon as possible whether the credentials emanated from the proper source. As to procedure, the sponsor of the draft resolution left it to the President to decide whether the draft resolution should be discussed and voted upon at once, in advance of the report of the Credentials Committee, or whether it should be disposed of in connexion with that report.

24. Following the submission of the draft resolution, the temporary President observed 14/ that the question bore a certain relationship to the organizational steps which were required of the Assembly at the beginning of each session and, while proper, the submission of the draft resolution at that stage raised a procedural problem not specifically covered in the rules of procedure. He thought that it would be desirable for the Assembly itself to resolve this.

25. During the debate, 15/ some representatives expressed the view, in support of an immediate decision by the Assembly and of the draft resolution itself, that it was indisputably in the interest of all Members that the Assembly should be correctly and

12/ G A (V), Plen., vol. I, 277th mtg., para. 8, A/1365.

13/ Ibid., paras. 9-12.

14/ Ibid., para. 13.

15/ Ibid., pp. 2-15.

legally constituted and that the plenary should consist of persons rightfully entitled to represent their respective countries in accordance with the provisions both of rule 27 of the rules of procedure and of Article 9 of the Charter. In the course of the discussions two additional draft resolutions 16/ were submitted by the USSR, as follows:

(1) "The General Assembly

"Decides that the representatives of the Kuomintang group cannot take part in the work of the General Assembly and its organs because they are not the representatives of China."

(2) "The General Assembly

"Decides to invite the representatives of the People's Government to take part in the work of the General Assembly and its organs."

26. As regards the first draft resolution, its sponsor maintained that it dealt with a question which should be settled before any other. With respect to procedure, the fact that no precedent existed in this regard should not impede the solution of the question. The Assembly was master of the situation and if the rules were silent on a particular point this could not, under any circumstances, serve as a reason for leaving this matter unconsidered.

27. Also in support of immediate action, but in opposition to this draft resolution, it was maintained that the Assembly should take a prompt decision in the interest of orderly procedure and of the necessity of proceeding to the organization of the session and the transaction of the business before it.

28. Reservations were, however, expressed to the proposed procedure on the grounds that many representatives had not been aware that such an important question would be raised at the opening of the session. The organization of the session did not require an immediate vote on the matter since the Assembly could take a final and definite decision after the credentials had been presented and all representatives had been recognized as presumptive representatives to participate in the session. The next item on the agenda was the appointment of a Credentials Committee and the proposals under consideration dealt with a new question which was not on the Assembly's agenda.

29. Supporting the view that a final decision should not be taken on the first day of the session, it was proposed that, in order to afford an opportunity for the careful consideration which was required, a special committee should be established to make recommendations to the plenary meeting and a draft resolution was submitted by Canada to this effect; 17/ while it might be felt that the Credentials Committee should deal with the question, the sponsor of this draft resolution believed that in view of the particular importance of the question its reference to a special committee appeared wiser in this case. The same view was held by another representative who argued that, if the Assembly were to decide that a more thorough examination be made of the question, it should not be undertaken by the Credentials Committee which, in his opinion, was not the competent body. It was true that the Credentials Committee could often give an opinion on a matter of substance; however, normally, the Committee confined itself to a statement to the effect that the credentials were in order and it could not give an

16/ Ibid., p. 3, A/1369, and p. 9, A/1370.

17/ Ibid., p. 10, A/1368.

opinion on such an important question as the one which was being discussed. Moreover, the advantage of a study by a special committee would be that the Assembly could base its decision on technical rather than on political considerations, as was right and proper.

30. The Assembly rejected the two draft resolutions which called for a decision on the substance of the matter. It adopted instead the draft resolution 18/ establishing a special committee "to consider the question of Chinese representation" and, pending its decision on the Committee's report, the Assembly decided to seat "the representatives of the National Government of China" with the same rights as other representatives. 19/

31. The Committee subsequently submitted a report 20/ which contained no recommendations on the question. The Assembly's action was, therefore, limited to taking note of that report. 21/

32. At the opening meeting of the eighth session, 22/ the Assembly adopted a resolution 23/ on the question of the representation of China by which it decided:

"to postpone for the duration of its eighth regular session in the current year consideration of all proposals to exclude the representatives of the Government of the Republic of China and to seat representatives of the Central People's Government of the People's Republic of China".

33. In the discussion which preceded the adoption of the resolution, the temporary President stated that he had expected that "questions of this kind" would have been considered and decided in the Credentials Committee but that the list of speakers indicated that there was a desire on the part of many delegations to discuss and possibly dispose of the matter at once.

34. No objections were raised to this procedure at that time. However, during the general debate, 24/ and also when the first report of the Credentials Committee was considered in plenary meeting, 25/ a representative expressed regret that the question of the credentials of the representatives of China had been the subject of controversy at the beginning of the session. He felt that the issue should properly be debated at the time of the submission of the report on credentials and expressed doubts concerning not only the wisdom but also the propriety of raising the question at the early stage because that was anticipating the findings of the Credentials Committee.

2. Consideration by the General Assembly of credentials of representatives

a. PROCEDURE FOR EXAMINATION AND APPROVAL

1. At the opening of a session

35. Rule 28 of the rules of procedure of the General Assembly governs the method by which the Assembly examines the credentials of representatives at each session. This

18/ G A resolution 490 (V).

19/ G A (V), Plen., vol. I, 277th mtg., paras. 176-186.

20/ A/1923.

21/ G A (V), Plen., vol. II, 332nd mtg., p. 747, para. 5.

22/ G A (VIII), Plen., 432nd mtg., p. 10, para. 111.

23/ G A resolution 800 (VIII).

24/ G A (VIII), Plen., 448th mtg., p. 205, para. 158.

25/ Ibid., 449th mtg., p. 216, para. 53.

rule provides for the establishment of a Credentials Committee at the beginning of the session, consisting of nine members appointed by the Assembly on the proposal of the President. The Committee is charged, under the rules, with the examination of all credentials and is instructed to report to the Assembly without delay.

36. It has been the normal practice throughout the regular and special sessions for the Assembly to observe the procedure envisaged in rule 28. However, the question whether it is proper for the Assembly to entertain and take action on any proposal regarding the credentials of the representatives of a Member State in plenary meeting, before the Credentials Committee has submitted its report, was raised at the fifth session 26/ and even more explicitly at the eighth session 27/ when objections were raised with regard to the propriety of this procedure.

ii. At the reconvening of a divided session

37. When a session of the General Assembly has been divided into two parts, as in the case of the first and third sessions, or has recessed and reconvened at a later date, as in the case of the seventh, the Credentials Committee appointed at the beginning of each session has continued to serve for the examination of credentials.

38. The Committee appointed at the opening of the third session, for example, reported at the second part of that session that it recognized that the credentials of representatives remained in effect and that new credentials were necessary only when new representatives were appointed for the second part of a session. It further reported on which Governments had not changed the list of their representatives and, as regards those which had modified the composition of their delegations, it noted which of them had submitted credentials fully meeting the requirements of rule 27 of the rules of procedure. Pending a subsequent examination of final credentials, the Committee proposed that the representatives of those States which had submitted "temporary" credentials should be considered "as on the same footing as the other representatives". 28/

b. PROVISIONAL ADMISSION OF REPRESENTATIVES TO A SESSION

39. Rule 29 of the rules of procedure states that:

"Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives, until the Credentials Committee has reported and the General Assembly has given its decision."

40. Representatives have been admitted provisionally to a session in the following two circumstances:

i. Owing to objections made by a Member

41. The first occasion on which objections were made to the credentials of the representatives of a Member State in the General Assembly was at the opening meeting of the fifth session when the question arose in connexion with the representation of China in the Assembly and its organs. At that time, it was proposed that the Assembly should

26/ See paras. 23, 24, 27 and 28 above.

27/ See para. 34 above.

28/ G A (III/2), Plen., 196th mtg., pp. 140-141.

decide that the Central Government of the People's Republic of China should be entitled to represent China in the Assembly; that the representatives of the "Kuomintang group" could not take part in the work of the Assembly and its organs because they were not the representatives of China; and that the representatives of the People's Government should be invited.

42. As outlined in paragraphs 22 to 30 above, the Assembly rejected these proposals and, pending a decision on the report of the Special Committee which it established, decided that the representatives of the National Government of China should be seated with the same rights as other representatives. 29/

43. During the sixth, seventh and eighth sessions, similar objections regarding the "validity" and "legality" of the credentials of the representatives of the National Government of China were made. 30/ The matter was disposed of on each occasion by the adoption of a decision which would postpone consideration for the duration of the session of proposals to exclude the representatives of the Government of the Republic of China and to seat the representatives of the Central People's Government of the People's Republic of China. 31/ In view of these decisions, the question of seating provisionally the representatives to whose admission objection had been made did not arise.

ii. Owing to a lack of full credentials

44. While the rules of procedure do not specifically distinguish between provisional and full powers of representatives, it appears that rule 29 (see para. 39) has been applied not only with respect to objections regarding admission but also in connexion with the seating of representatives whose credentials have not fully met the requirements of rule 27 (see paras. 18 and 19), in that their credentials, signed by the Head of State or Government or by the Minister for Foreign Affairs, have not been received when the Credentials Committee submits its first report.

45. In practice, the Credentials Committee has normally had to meet at least twice during each session, the first meeting being held within ten days to two weeks after the opening of the session for the purpose of reporting to the Assembly on the status of the credentials received, and the second to examine and report on the original credentials from the Governments which had issued "provisional" powers.

29/ G A (S-2), Plen., 130th mtg., p. 5.

30/ G A (VI), Plen., 351st mtg., pp. 211-212, paras. 6-10;

G A (VII), Plen., 389th mtg., pp. 163-167;

G A (VIII), Plen., 449th mtg., pp. 215-216, paras. 45-47.

31/ G A (VI), Plen., 342nd mtg., p. 104, para. 155;

G A (VII), Plen., 389th mtg., pp. 167-168, para. 46;

G A (VIII), Plen., 432nd mtg., p. 10, para. 111.

ARTICLE 10

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TEXT OF ARTICLE 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

INTRODUCTORY NOTE

1. Article 10 stands first in order and is the broadest in terms of the eight Articles of the Charter relating to the functions and powers of the General Assembly. The range of the questions or matters which it authorizes the Assembly to discuss is as wide as the scope of the Charter itself, and the Assembly's right to make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters is subject, under its terms, only to the restriction, temporary by definition, contained in Article 12 relative to the exercise by the Security Council of the functions assigned to it under the Charter. As regards Article 11, its provisions expressly state that the powers of the Assembly set forth therein shall not limit "the general scope of Article 10".

2. The "general scope" of this Article and the breadth of the powers of discussion which it confers on the Assembly have been referred to many times both in committee and in plenary meeting by representatives who wished to stress the over-all responsibility of the Assembly as a world forum for the consideration of international problems and its role in the Organization as the only principal organ on which all States Members are represented. References of this type have not been confined to the discussion of political matters alone; they have also occurred in connexion with the consideration of questions relating to the Assembly's activities in the economic, social and humanitarian spheres, questions concerning Non-Self-Governing and Trust Territories and frequently also questions of an internal character affecting the methods and procedures of the General Assembly in the conduct of its business. In short, there is scarcely any field in which the Assembly has taken an interest where reference has not been made, at one time or another, to the provisions of Article 10.

3. Article 10 has mostly been cited together with the specific provisions contained in other Articles of the Charter which define the powers of the General Assembly in various areas of international concern. Moreover, it has usually been referred to as an additional basis rather than as the principal basis for action by the Assembly, which, in the majority of cases, has been found in the more explicit provisions of Articles 11, 12, 13 and 14.

4. The study of the Assembly's practice under Article 10 is therefore limited to those resolutions and Charter questions which bear clearly and primarily, though not exclusively, on that Article. No attempt has been made to indicate every instance in which this Article has been mentioned in the debates. Furthermore, the present study is to be read together with the studies in this Repertory on the Articles referred to in paragraph 3 above.

5. By reason of its comprehensive character and particularly by virtue of the provision that the Assembly may discuss any questions or any matters "within the scope of the present Charter", Article 10 has very often been cited when the question whether Article 2 (7) limited the competence of the Assembly to discuss and to make recommendations on a particular matter arose. The discussions in this regard, however, appear to shed light more on the constitutional questions related to Article 2 (7) than to those bearing on Article 10. To avoid duplication, the items under which these discussions have taken place and the arguments and counter-arguments that have been advanced, though bearing also on Article 10, have been dealt with in the study on Article 2 (7) with the exception of the three cases mentioned in paragraph 8 below.

6. Very few resolutions adopted by the General Assembly contain a reference to Article 10. Only in connexion with the adoption of resolutions on the reports of the First Committee and the Ad Hoc Political Committee has such reference been found in the decisions themselves or in the proceedings leading to their adoption. Moreover, for the reasons indicated in paragraph 3 above, most of the resolutions adopted by the General Assembly on the reports of its political committees, as well as certain resolutions of a political character adopted without reference to a committee, appear to bear more directly on Articles 11, 13 and 14, which deal with specific functions and powers of the General Assembly, than on Article 10. Resolutions of the General Assembly effecting the admission of a State to membership in the United Nations, as well as resolutions of the Assembly containing recommendations to the Security Council with regard to the question of admission of new Members, have been studied under Article 4. The remaining resolutions bearing upon Article 10 are listed in Annex I along with the corresponding agenda item. No constitutional significance attaches to this classification, which is merely a convenient means of presenting the material.

7. Two Charter questions are dealt with in the Analytical Summary of Practice.

8. The first relates to the application of the term "within the scope of the Charter" in deciding whether a particular matter may be discussed. While this question has also arisen in connexion with the "domestic jurisdiction" clause of Article 2, three cases in which discussion on the actual terms of Article 10 has taken place have been selected to illustrate the interpretation which has been given to this Article in connexion with the powers of the General Assembly.

9. The second question involves the Assembly's right to make recommendations "relating to the powers and functions" of other organs provided for in the Charter. It deals with the question of the scope of those recommendations. Three of the four resolutions reviewed under this question concern the voting procedure in the Security Council. The fourth concerns the Assembly's action regarding the item "Recognition by the United Nations of the representation of a Member State". The text of these resolutions is appended as annex II.

I. GENERAL SURVEY

10. The General Assembly, while exercising its functions and powers of discussion and recommendation in dealing with the agenda items included in annex I, adopted a number of resolutions which, on the basis of the considerations stated in the Introductory Note, have been considered as resolutions bearing upon Article 10.

11. The practice of the General Assembly with regard to the addresses of the recommendations contained in the resolutions 1/ listed in annex I may be summarized as indicated in the following paragraphs.

12. Recommendations have been addressed by the Assembly as follows: to all Members of the United Nations; 2/ to all Members and other specific States; 3/ to all Members or simultaneously to specific Members, and to other addressees, including individuals; 4/ to specific Members and non-members; 5/ to non-members in general; 6/ and to specific non-members. 7/

13. The Assembly has also addressed recommendations to the Government of a specific Member of the United Nations; 8/ to specific Governments; 9/ and, simultaneously, to all Governments and other addressees, including individuals. 10/ The Assembly has, further, addressed its recommendations to specialized agencies; 11/ to administering Powers; 12/ to all authorities in a State under occupation 13/ and to international non-governmental organizations. 14/

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- 1/ Certain resolutions classified in this study as resolutions bearing upon Article 10, include among their provisions recommendations to the Economic and Social Council and the Trusteeship Council and have consequently also a bearing upon Articles 13 and 16, which provide for recommendations to those organs. Article 10 provides only for recommendations to the Members of the United Nations and the Security Council.
- 2/ G A resolutions: 3 (I), 32 (I), 112 B (II), 110 (II), 267 (III), 385 (V) and 616 B (VII).
- 3/ G A resolutions: 193 C (III) and 288 B (IV).
- 4/ In this connexion the General Assembly addressed its recommendations to: "Member States and other nations" (resolution 195 (III)); "Member States, the Government of the Republic of Korea, and all Koreans" (resolution 293 (IV)); "the Member States concerned, the Government of the Republic of Korea, and all Koreans (resolution 195 (III)).
- 5/ G A resolutions: 302 (IV), 303 (IV), 382 A (v), 382 C (v) and 517 (VI).
- 6/ G A resolution 3 (I).
- 7/ G A resolution 272 (III).
- 8/ G A resolutions: 616 A (VII) and 721 (VIII).
- 9/ G A resolutions: 394 (v), 512 (VI), 513 (VI), 613 (VII), 618 (VII) and 701 (VII).
- 10/ In this connexion the General Assembly addressed its resolutions to: "all governments and authorities concerned" (resolutions 194 (III), 394 (v), 706 (VII)); "all governments, specialized agencies and non-governmental organizations" (resolution 701 (VII)), "all Governments and peoples and particularly ... the inhabitants of Palestine" (resolution 107 (S-1)); "all Governments, organizations and persons" (resolution 186 (S-2)).
- 11/ G A resolution 387 (v).
- 12/ G A resolutions: 289 (IV) and 387 (v).
- 13/ In this connexion a recommendation was addressed to "all authorities in the Federal Republic of Germany, Berlin and in the Soviet Zone" (resolution 510 (VI)).
- 14/ The International Committee of the Red Cross and the League of Red Cross Societies (G A resolutions 382 C (v) and 517 (VI)).

14. Recommendations have been addressed to the following organs of the United Nations: the Security Council; 15/ the Economic and Social Council; 16/ the Trusteeship Council; 17/ and the "appropriate organs of the United Nations". 18/ Recommendations have also been addressed to the permanent members of the Security Council; 19/ and to the members of the Security Council. 20/

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the application of the term "within the scope of the Charter" in deciding whether a particular matter may be discussed

15. The term "within the scope of the Charter" has been the subject of discussion on some occasions when objections concerning the competence of the Assembly to discuss particular matters were raised. The considerations which were advanced regarding the application of this term in three cases when more than a passing reference was made to this provision of Article 10 21/ are summarized below.

16. During the third session of the General Assembly, when the inclusion of an item relating to the observance of human rights and fundamental freedoms in Bulgaria and Hungary was considered in the General Committee, 22/ the provisions of Article 10 were invoked against the argument that the Assembly was not competent to consider this question. It was maintained that in the light of the provisions of Article 55 the Assembly was fully competent, under Article 10, to consider whether, in a specific case, human rights had been respected either by a Member or by a non-member State, since that Article was essentially universal in scope. The right of discussion provided for in Article 10 of the Charter was one of its most important provisions. There was no question which came within the scope of the Charter and which concerned its aims, its principles or any one of its provisions which could not be discussed by the Assembly. It was further held that, as a world forum, the Assembly could, under Article 10, discuss any questions which concerned the conscience of all civilized men and which might threaten world peace. It was also pointed out that the problem under consideration involved so many provisions of the Charter with regard to human rights

15/ G A resolution 40 (I).

16/ G A resolutions: 266 (III), 387 (V) and 515 (VI).

17/ G A resolutions: 185 (S-2), 289 A (IV) and 303 (IV).

18/ G A resolutions: 494 (V) and 608 (VI).

19/ G A resolutions: 40 (I), 117 (II) and 267 (III).

20/ G A resolution 267 (III).

21/ For treatment of these cases, see also in this Repertory under Article 2 (7), Article 14 and Article 55.

22/ For texts of relevant statements, see G A (III/2), General Committee, 58th mtg.: Australia, pp. 15 and 16; Panama, pp. 20 and 21; 59th mtg.: China, p. 33; Mexico, p. 35; United States, p. 34.

that any question which involved these great principles was indisputably within the purview of the Charter. As regards the Assembly itself, the view was expressed that it should enjoy the greatest possible freedom of discussion and the right to make all types of recommendations; Articles 10 and 14 should be interpreted in the widest and most liberal manner and the Assembly should always be accessible to States which wished to present their points of view.

17. In plenary meeting, 23/ when the recommendation of the General Committee for inclusion of the item was considered, the question of the Assembly's competence was raised again. One representative maintained that this question involved the interpretation of the Charter to which the elementary rule of legal interpretation should be applied, namely, that any instrument must be interpreted in its entirety. Under Article 10, the Assembly could discuss any matters within the scope of the Charter, and Article 14 authorized it to recommend measures for the peaceful adjustment of any situation likely to impair friendly relations among nations. One of the purposes of the United Nations was to achieve international co-operation in promoting respect for human rights and fundamental freedoms. The provisions of Articles 55 and 56 were universal -- they did not apply only to Members of the Organization. Consequently, the item under consideration, which related to the observance of human rights in two particular countries, clearly fell within the scope of the Charter.

18. Similar views were advanced again during the consideration of the item in the Ad Hoc Political Committee. 24/

19. During the same session, further references were made 25/ to Article 10 in the same context, but with respect to the consideration of an item relating to the question of the violation by the USSR of "fundamental human rights, traditional diplomatic practices and other principles of the Charter". In this case, however, the discussion centred principally on the application of Article 14 under which the request for inclusion 26/ in the agenda had been submitted. The arguments relating to Article 10 were essentially the same as those summarized above.

20. The question whether a particular matter is "within the scope of the Charter" and the Assembly's competence with regard to it has also been raised in connexion with the item relating to the treatment of people of Indian origin in the Union of South Africa, with attendant references to the application of Article 10. The item was initially submitted by India under Articles 10 and 14 at the second part of the first session and has been on the agenda of each succeeding session, with the exception of the fourth, either at the request of India 27/ or by a decision of the Assembly itself. 28/

23/ For texts of relevant statements, see G A (III/2), Plen., 202nd mtg.: Cuba, pp. 246-248; United States, pp. 11 and 12.

24/ For texts of relevant statements, see G A (III/2), Ad Hoc Pol. Com., 35th mtg.: Cuba, p. 78; United States, p. 39; 37th mtg.: Brazil, p. 115; 33th mtg.: Chile, p. 130; 39th mtg.: Lebanon, p. 136.

25/ For texts of relevant statements, see G A (III/1), 6th Com., 134th mtg.: Chile, p. 725; United States, p. 733.

26/ G A (III/1), Plen., Annexes, p. 1, A/560.

27/ G A (I/2), Joint 1st and 6th Com., p. 52, annex 1, A/149;

G A (III/2), Plen., Annexes, p. 1, A/577;

G A (V), Plen., Annexes, a.i. 57, p. 1, A/1289.

28/ G A resolutions: 44 (I), 395 (V), 511 (VI) and 615 (VII).

21. There has been constitutional discussion on each occasion concerning the competence of the Assembly, with particular emphasis on the provisions of Article 2 (7). Generally, the references to the application of Article 10 took one of the following forms: (a) they were implicit; (b) they consisted of the simple assertion that the matter was within the scope of the Charter; (c) they were incidental to arguments based primarily on the question of "domestic jurisdiction", or on Article 14 or on Articles 13 and 55. However, during the third session 29/, the provisions of Article 10 were cited at greater length to defend the position that the Assembly was fully competent to consider the question of the treatment of people of Indian origin in the Union of South Africa. This Article, it was pointed out, referred to any matters within the scope of the Charter and one of the purposes of the United Nations was to achieve international co-operation in promoting and encouraging respect for human rights. According to Article 10 the Assembly could, therefore, take certain action in that respect. Furthermore, it had been said 30/ that the Assembly was empowered to investigate whether any State had or had not respected human rights in virtue of Article 55, whose application was absolutely general. Thus, an argument based on Article 2 (7) was invalid in the case of a specific question coming within the scope of other Articles, since it was obviously the duty of the United Nations to see that the provisions of the Charter were respected. The rights of the Assembly, according to Article 10, were fundamental and there was no question connected with the Purposes, Principles and provisions of the Charter that it could not discuss. As regards human rights, they were mentioned no less than seven times in the Charter. Since Article 10 authorized the Assembly to discuss any matter within the scope of the Charter it could hardly be argued that the Assembly was prohibited by Article 2 (7) from discussing so basic a matter. During the fifth, 31/ sixth, 32/ seventh 33/ and eighth 34/ sessions, when the item was considered, similar arguments bearing on Article 10 or simple references to it were advanced in the Ad Hoc Political Committee.

22. The item relating to race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa has given rise to constitutional discussions along the same lines as those which have taken place on the item mentioned in the preceding paragraphs. In fact, references to the Assembly's action on the latter item were made in order to justify action regarding the question of race conflict during the seventh session when the item relating to race conflict in South Africa was first considered. At that session, a number of references 35/ were

29/ For texts of relevant statements, see G A (III/2), 1st Com., 267th mtg.: India, pp. 307-309; Philippines, p. 312.

30/ For text of relevant statement, see G A (III/2), General Com., 58th mtg.: Australia, pp. 15 and 16.

31/ For texts of relevant statements, see G A (V), Ad Hoc Pol. Com., 42nd mtg.: Iran, p. 256; 44th mtg.: Mexico, pp. 271 and 272; 45th mtg.: India, p. 276.

32/ For text of relevant statement, see G A (III/1), Ad Hoc Pol. Com., 28th mtg.: Indonesia, p. 156.

33/ For texts of relevant statements, see G A (VII), Ad Hoc Pol. Com., 8th mtg.: Iraq, p. 38; 9th mtg.: Lebanon, p. 44.

34/ For texts of relevant statements, see G A (VIII), Ad Hoc Pol. Com., 14th mtg.: Ecuador, p. 69; 19th mtg.: Brazil, p. 93; Syria, p. 95; 20th mtg.: India, p. 101.

35/ For texts of relevant statements, see G A (VII), Plen., 381st mtg.: Chile, pp. 62 and 63; United Kingdom, pp. 61 and 62.
Ad Hoc Pol. Com., 13th mtg.: Union of South Africa, p. 65; 14th mtg.: United Kingdom, p. 72; 18th mtg.: China, p. 98; India, pp. 96 and 97; Iran, p. 102; 19th mtg.: Ethiopia, p. 109; Israel, p. 105.

made to Article 10, in conjunction with Articles 13, 14, 55 and 56, to establish that the item under discussion was one within the scope of the Charter which the Assembly was competent to consider. While the discussions bore more directly on the problem of reconciling the principle of non-intervention with the equally fundamental principle of respect for human rights, ^{36/} the provisions of Article 10 were expressly cited by one representative ^{37/} whose views may be summarized as follows: one of the purposes of the United Nations was to promote and encourage respect for human rights and for fundamental freedoms for all. Under the terms of Article 10, the Assembly could discuss any question within the scope of the Charter and make recommendations to Members. The question before the Committee, relating to respect for human rights, was indubitably within the scope of the Charter, and the Assembly was therefore competent to consider it. Acceptance of the argument of the Assembly's incompetence would mean that the provisions of Article 10, those of Articles 55 and 56 and of many other relevant Articles would become nugatory and the Assembly would be paralysed.

23. During the eighth session, ^{38/} when the Assembly considered the report of the Commission which had been established ^{39/} to study the racial situation in the Union of South Africa, references to the provisions of Article 10 were made by some representatives who questioned whether the matter came within the scope of the Charter. It was remarked, in this connexion, that it had been asked what became of the powers of recommendation conferred on the Assembly by Articles 10 and 14 if Article 2 (7) were to be interpreted literally; whether there was not some contradiction between those provisions and, if so, why Article 2 (7) should prevail. But there was no incompatibility — the Assembly could act without infringing the prohibition contained in Article 2 (7). In the first place, in matters essentially within domestic jurisdiction, it could make recommendations directed not against any particular State or States but recommendations of a general nature, directed to all the Members; the proclamation of the Universal Declaration of Human Rights came within that category. In the second place, if it related to one single State, action by United Nations organs was permissible so long as it had the consent of that State and consent could be given not only through the Charter but also through special conventions. Thus Articles 10 and 14 were not incompatible with Article 2 (7) for they allowed the Assembly broad powers of recommendation in matters within domestic jurisdiction, either in the form of general provisions or else, with the consent of the States concerned, in particular cases. In those two situations, action by the Assembly could not constitute interference as prohibited by Article 2 (7). Another representative, who also held the view that the item was outside the competence of the Assembly, pointed out that no valid distinction could be drawn under Article 10 between "discussion" and "recommendations". That Article authorized the Assembly to "discuss any questions or any matters within the scope of the present Charter" and to "make recommendations to the Members ... on any such questions or matters", but matters which were within the domestic jurisdiction of a State did not come within the scope of the Charter. The provisions of the Preamble and of Article 1 confirmed that point of view, for they indicated clearly that the United Nations was only concerned with problems of an international nature. On the other hand, it was maintained that Article 10 provided that the Assembly might "discuss any questions ..." Since discussion did not mean action in pursuit of the purposes stated in Article 1, Article 10 did not refer to the provisions of Article 2 (7) although it did refer to those of Article 12.

^{36/} For text of statement, see G A (VII), *Ad Hoc Pol. Com.*, 16th mtg., Mexico, p. 81.

^{37/} For text of statement, see G A (VII), *Ad Hoc Pol. Com.*, 18th mtg., India, p. 96.

^{38/} For texts of statements, see G A (VIII), *Ad Hoc Pol. Com.*, 32nd mtg.: Belgium, pp. 159 and 160; 34th mtg.: United Kingdom, pp. 169 and 170; 36th mtg.: Denmark, p. 184; 37th mtg.: Pakistan, p. 190.

^{39/} G A resolution 616 (VII).

B. The question of the scope of recommendations of the General Assembly
"relating to the powers and functions of any organs
provided for in the present Charter"

24. Article 10 provides, *inter alia*, that the General Assembly may make recommendations to the Members of the United Nations or to the Security Council or to both on any questions or matters "relating to the powers and functions of any organs provided for in the present Charter".

25. The four resolutions reviewed below are of particular significance 40/ to illustrate the scope of such recommendations in the practice of the Assembly.

26. Resolutions 40 (I), 117 (II) and 267 (III) were the result of the consideration by the General Assembly of various items 41/ concerning the voting procedure in the Security Council. The last two are among the few resolutions of the General Assembly

40/ Resolution 181 (II), "Future government of Palestine", also has particular significance with regard to this question, both in the light of its provisions and in the light of the constitutional discussion in the proceedings connected with its adoption during which Article 10 as well as Article 14 were invoked. The resolution is treated in this Repertory under Article 14 in view of the fact that the Assembly used the language of that Article in the preamble of the resolution when it considered that the situation in Palestine was "one which is likely to impair the general welfare and friendly relations among nations". (See study on Article 14; for proceedings of the Security Council connected with resolution 181 (II), see study on Article 39).

Resolutions of the General Assembly containing recommendations to the Security Council relating to the question of admission of new Members, which for convenience of presentation are treated in Article 4, are also relevant to the above question.

41/ Item 32: "Application of Article 27 of the Charter dealing with the method of voting in the Security Council"; item 35: "Calling of General Conference of Members of the United Nations under Article 109 of the Charter in order to eliminate the so-called 'veto privilege'"; item 43: "Calling of General Conference of Members of the United Nations under Article 109 of the Charter for the purpose of reviewing the present Charter", considered during the second part of the first session. Item 23: "Convocation of a general conference under Article 109 of the Charter to amend the privilege of the veto"; item 44: "Resolution of the second part of the first session of the General Assembly in relation to the exercise of the veto in the Security Council and the extent to which the recommendations contained in that resolution have been carried out", considered during the second session. Item 3 of the agenda of the first part of the third session; item 17: "The problem of voting in the Security Council: (a) Report of the Interim Committee of the General Assembly; (b) Convocation of a general conference under Article 109 of the Charter in order to study the question of the veto in the Security Council", considered during the second part of the third session.

in which the Assembly expressly stated ^{42/} the Charter Article under which it was acting. Although the debates connected with the three resolutions centred predominantly on the principle of unanimity of the permanent members of the Security Council and the history of that principle, references were also made to the question of the scope of the recommendations relating to the powers and functions of other organs of the United Nations which it would be within the competence of the General Assembly to make. In view of the similarity of the Charter arguments advanced during the discussion, the relevant views stated at the three sessions of the General Assembly are summarized together.

27. Resolution 396 (V), the fourth illustrative resolution, was approved by the General Assembly as a result of its consideration of the item "Recognition by the United Nations of the representation of a Member State", submitted by a representative as an item referring to a situation for which "the Charter makes no provision ... nor do the rules of procedure of the main organs give any standards by which it may concretely and specifically be solved". ^{43/} The proceedings connected with resolution 396 (V) included substantial constitutional discussion which, in some of its aspects, is relevant to the general question examined here.

1. Resolutions 40 (I), 117 (III) and 267 (III)

28. In the discussion preceding the adoption of these resolutions the view was expressed, on the one side, that under Article 10 the General Assembly had the authority to discuss questions relating to the powers and functions of any organ of the United Nations and to make recommendations on those questions to the Members of the United Nations and to the Security Council. It was, therefore, unquestionably the duty of the General Assembly to examine how the Security Council carried out its functions and powers, particularly under Article 24. The Security Council had complete power over its own rules and procedures, but the General Assembly had the right to examine the problem of the voting in the Security Council and to make recommendations with regard to this problem. Consequently, it was entirely appropriate for the General Assembly to recommend certain methods with regard to the smooth and effective practices and procedures of the Security Council in order to ensure the prompt and effective exercise of its functions. If the General Assembly had an opinion regarding the working of the Organization, it was its duty to speak its mind: it would be a denial by the General Assembly of its rights and a neglect of its duty if it failed to take notice of any defects in the working of the United Nations or if it refrained from expressing its opinion on the way in which those defects could be remedied.

29. On the other side it was argued that, while Article 10 authorized the General Assembly to make any recommendations as regards the powers and functions of the Security Council as well as of other organs of the United Nations, the Security Council under

^{42/} The first paragraph of resolution 117 (II) read as follows: "The General Assembly, in the exercise of its power to make recommendations relating to the powers and functions of any organs of the United Nations (Article 10 of the Charter)". In the second paragraph of resolution 267 (III) the General Assembly stated that it was "Exercising the authority conferred upon it by Article 10 of the Charter to discuss any question within the scope of the Charter or relating to the functions of any organ of the United Nations and to make recommendations to the Members of the United Nations and to the Security Council thereon,".

^{43/} See para. 31 below.

Article 30 had the exclusive right to adopt its own rules of procedure. The methods of the voting in the Security Council were part of its own procedure and remained essentially within its own competence. Therefore, whatever resolution might be adopted on this question by the General Assembly, it could only take effect when implemented by the Security Council. Unless such a resolution of the General Assembly was accepted by all the members of the Security Council, the chance of having a resolution of the General Assembly fully implemented would remain uncertain.

30. It was further argued that the proposed recommendations concerning the voting procedure in the Security Council represented an effort to eliminate the voting formula of Article 27 and to break the fundamental principles of the Charter. They constituted further attempts to undermine the principle of unanimity of the permanent members of the Security Council, were incompatible with the relevant provisions of the Charter and aimed at substituting a new procedure for that provided for in the Charter. The recommendations were, therefore, tantamount to a revision of the Charter by circumventing Articles 108 and 109. It was also pointed out in this connexion that essential questions relating to the maintenance of international peace and security could not be settled by voting and could not be decided automatically by a simple majority. 44/

Decisions

At its 61st plenary meeting on 13 December 1946, the General Assembly adopted 45/ by 36 votes to 6, with 9 abstentions, resolution 40 (I): "Voting procedure in the Security Council". 46/

At its 123rd plenary meeting on 21 November 1947, the General Assembly adopted 47/ by 38 votes to 6, with 11 abstentions, resolution 117 (II): "Convocation of a general conference under Article 109 of the Charter to amend the privilege of the veto and resolution of the second part of the first session of the General Assembly in relation to the exercise of the veto". 48/

- 44/ For texts of relevant statements, see
G A (I/2), 1st Com., 19th mtg.: Australia, p. 86; Poland, p. 91; 20th mtg.: USSR, p. 100; Yugoslavia, p. 96; 21st mtg.: Czechoslovakia, p. 104; 33rd mtg.: Australia, p. 211; 42nd mtg.: China, p. 286;
G A (I/2), Plen., 60th mtg.: Australia, p. 1233; United States, p. 1246; 61st mtg.: China, pp. 1259 and 1260.
G A (II), 1st Com., 113th mtg.: China, p. 489; 114th mtg.: USSR, pp. 504 and 505.
G A (III/1), Ad Hoc Pol. Com., 17th mtg.: Canada, p. 193; Poland, pp. 202 and 204; United States, p. 197; 20th mtg.: USSR, pp. 232 and 233; 21st mtg.: Byelorussian SSR, p. 245; Ukrainian SSR, p. 241; 24th mtg.: France, p. 278.
GA (III/2), Plen., 193rd mtg.: Czechoslovakia, p. 76; 194th mtg.: France, p. 96; Yugoslavia, pp. 90 and 93; 195th mtg.: Byelorussian SSR, p. 119; Ukrainian SSR, p. 116.
45/ G A (I/2), Plen., p. 1264.
46/ For text, see annex II.
47/ G A (II), Plen., vol. II, p. 1272.
48/ For text, see annex II.

At its 195th plenary meeting on 14 April 1948, the General Assembly adopted 49/ by 43 votes to 6, with 2 abstentions, resolution 267 (III): "The problem of voting in the Security Council". 50/

2. Resolution 396 (V)

a. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 396 (V)

31. By a letter 51/ dated 19 July 1950, the alternate representative of Cuba to the United Nations requested the Secretary-General to include the question of the recognition by the United Nations of the representation of a Member State in the agenda of the fifth session of the General Assembly. By a letter 52/ dated 26 July 1950, the permanent representative of Cuba transmitted to the Secretary-General an explanatory memorandum in which it was stated that

"... the item proposed for the General Assembly's consideration does not refer only to the formal problem of credentials, but to the problem that arises with regard to the legality of the representation of a Member State; that is, when the United Nations has to decide which government has the right to represent that State in the Organization. The Charter makes no provision for such a situation, nor do the rules of procedure of the main organs give any standards by which it may concretely and specifically be solved."

32. At its 285th plenary meeting on 26 September 1950, the General Assembly decided 53/ to include the item in the agenda of the fifth session. The Ad Hoc Political Committee considered the item at its 18th to 24th meetings inclusive, and again at its 57th to 60th meetings inclusive.

33. At the 18th meeting of the Ad Hoc Political Committee, the representative of Cuba submitted a draft resolution 54/ which provided that the questions arising in connexion with the representation of a Member State in the United Nations should be decided in the light of: (a) effective authority over the national territory; (b) the general consent of the population; (c) ability and willingness to achieve the purposes of the Charter, to observe its principles and to fulfil international obligations of the State; and (d) respect for human rights and fundamental freedoms.

34. At the 19th meeting of the Ad Hoc Political Committee, the representative of the United Kingdom submitted a draft resolution 55/ which provided that where the question of the representation of a Member State arose in consequence of internal processes or changes which had taken place in that State the right of a government to represent the Member State concerned in the United Nations should be recognized if that government exercised effective control and authority over all or nearly all the national territory, and had the obedience of the bulk of the population of that territory, in such a way that this control, authority and obedience appeared to be of a permanent character.

49/ G A (III/2), Plen., p. 129.

50/ For text, see annex II.

51/ G A (V), Annexes, a.i. 61, p. 1; A/1292.

52/ G A (V), Annexes, a.i. 61, pp. 2 and 3; A/1308.

53/ G A (V), Plen., vol. I, p. 115.

54/ G A (V), Annexes, a.i. 61, p. 5; A/AC.38/L.6.

55/ G A (V), Annexes, a.i. 61, p. 6; A/AC.38/L.21.

35. At the 24th meeting, the Ad Hoc Political Committee decided 56/ by 29 votes to 6, with 7 abstentions, to establish a Sub-Committee to consider the item in the light of all proposals, amendments, suggestions and views presented in the course of the debate.

36. At the 57th meeting of the Ad Hoc Political Committee, the Rapporteur of the Sub-Committee presented its report and the draft resolution 57/ adopted by the Sub-Committee for consideration by the Committee. In the draft resolution it was provided that,

"The General Assembly,

".....

"1. Recommends:

"(a) That whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations, and this question becomes the subject of controversy in the United Nations, it should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case;

"(b) That the following should be among the factors to be taken into consideration in determining any such question:

"(i) The extent to which the new authority exercises effective control over the territory of the Member State concerned and is generally accepted by the population;

"(ii) The willingness of that authority to accept responsibility for the carrying out by the Member State of its obligations under the Charter;

"(iii) The extent to which that authority has been established through internal processes in the Member State.

"2. Recommends that when any such question arises, it should be considered by the General Assembly, or by the Interim Committee if the Assembly is not in session;

"3. Recommends that the decision reached by the General Assembly or its Interim Committee concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies;

"4. Declares that decisions reached by the General Assembly or its Interim Committee concerning any such question shall not of themselves affect the direct relations of individual Member States with the State, the representation of which has been the subject of such decisions;"

37. At the same meeting, the representative of Belgium submitted an amendment 58/ to this draft resolution proposing to delete paragraph 2, and to substitute the words "attitude adopted" for the words "decision(s) reached" in paragraphs 3 and 4 and consequential drafting changes in paragraph 4.

56/ G A (V), Ad Hoc Pol. Com., p. 159.

57/ G A (V), Annexes, a.i. 61, pp. 9-12; A/AC.38/L.45.

58/ G A (V), Ad Hoc Pol. Com., A/AC.38/L.50, p. 367.

38. Also, at the same meeting, 59/ the representative of Egypt submitted an amendment 60/ proposing to delete sub-paragraph 1 (b) of the draft resolution.

39. At the 60th meeting of the Ad Hoc Political Committee the amendments submitted by the representatives of Belgium and Egypt were adopted and the draft resolution of the Sub-Committee, as amended, after a vote by paragraphs, was adopted as a whole by 29 votes to 2, with 13 abstentions. 61/

40. The General Assembly considered the draft resolution adopted by the Ad Hoc Political Committee at its 325th plenary meeting on 14 December 1950.

B. SUMMARY OF RELEVANT CONSTITUTIONAL DISCUSSION IN THE
PROCEEDINGS CONNECTED WITH RESOLUTION 396 (V)

41. In the discussion which preceded the adoption by the Ad Hoc Political Committee of the amendment 62/ submitted by the representative of Belgium to paragraphs 3 and 4 of the draft resolution presented by the Sub-Committee, the sponsor of the amendment and those supporting it argued that the draft resolution merely proposed to settle the question of credentials when two sets issued by two different authorities were presented. There could be no doubt that it was the prerogative of each United Nations organ to reach a decision concerning the credentials presented to it. An attitude adopted by the General Assembly did not have the effect of a decision as far as other United Nations organs were concerned. The General Assembly and the Interim Committee could make no judgment except on their own behalf: their conclusions, when considered in relation to other United Nations organs, did not have the force of decisions. It was therefore better to speak of the "attitude" or "position" of the General Assembly or of the Interim Committee. It was provided in the Charter and in the rules of procedure of the General Assembly that other main organs of the United Nations were autonomous and thus the General Assembly could not impose its will upon them. However, a single organ should be charged with deciding on the question of representation, so that a Member State should not be represented in a different manner in various organs of the United Nations. The proposed solution, that the General Assembly should be competent in this matter, was perfectly logical because all Members were represented in the General Assembly. Another organ of the United Nations was hardly likely to adopt a policy different from that of the General Assembly.

42. Those opposing the amendment expressed the view that it would be preferable to allow the word "decision" to stand, as the general intention seemed to be that the General Assembly should adopt decisions which would be accepted by, and serve as a guide to, other organs of the United Nations. The Sub-Committee after a long discussion had decided to retain the word "decision", with the understanding that the use of the word "decision" did not imply that the action of the General Assembly would be binding on all other organs or on the specialized agencies. Any organ of the United Nations which adopted a specific attitude was in fact taking a decision.

43. Another representative contended that the provision of paragraph 3 of the draft resolution was contrary to Article 7, under which each organ of the United Nations was sovereign within the scope of its competence and activities; each organ, in accordance with its rules of procedure, was qualified to decide on matters of representation.

59/ G A (V), Annexes, a.i. 61, p. 15, A/1576.

60/ G A (V), Ad Hoc Pol. Com., A/AC.38/L.54, p. 380.

61/ G A (V), Ad Hoc Pol. Com., pp. 388 and 389.

62/ See para. 37 above.

44. On the other hand, it was maintained that the provision of paragraph 3 of the draft resolution in no way implied a violation of Article 7 with regard to the competence of various organs of the United Nations in connexion with representation. It was confined only to a recommendation to be submitted to those organs for study.

45. During the general consideration of the item certain representatives expressed the view that the draft resolution submitted by Cuba was in conformity with the system of the Charter and also took into account the political and legal standards that governed the relations of Member States outside that system. The recognition of a representative of a Member State must be based primarily on the principles of the Charter and on the generally recognized principles of international law applying to the recognition of States. The Charter implied no distinction between the conditions required for the admission of a State to membership in the United Nations and those governing the recognition of a representative from a Member State. A formula for this recognition should be a broad one. The origin of the government concerned appeared to be of particular importance in connexion with its application for a seat in the United Nations. Since the willingness and ability of a State could only be judged through its government, the qualifications laid down in Article 4 must also be applicable. The purposes of the United Nations would not be furthered by ignoring the fact that one or another of two competing claimants for recognition was unwilling or unable to carry out the obligations stipulated in the Charter. If one régime upheld the United Nations and the other defied it, morality and justice could not permit such facts to be disregarded. While the material aspect of the question could not be irrelevant, general principles of ethics should also be borne in mind. Further criteria for recognition should not be exclusive, but should be general and flexible enough to allow for the expression of factors which might be deemed essential, yet rigid enough to restrain arbitrary or capricious action and to permit the General Assembly to base its decisions on the circumstances of each particular case, bearing in mind the Purposes and Principles of the Charter. However, the General Assembly must have some latitude to declare a government unfit to sit in the General Assembly even though it might have control of the territory and have secured the tacit obedience of the people of the State in question.

46. Other representatives were of the opinion that the draft resolution submitted by Cuba was relevant to the question of admission of an applicant to membership in the United Nations rather than to the question of the recognition of a new government of a Member State and its right to represent that Member in the United Nations. The emphasis in Article 4 of the Charter was upon the question of admission to the United Nations of a State as an entity, not of a particular government of a State. The considerations which would govern the admission of a new Member under Article 4 were entirely separate from the question of whether a new government was or was not entitled to represent a State which was already a Member State. This question should be judged, therefore, on a different basis, and Article 4 bore no relation to it. The question of who represented a State was a question of fact which implied no moral or political approval of the government concerned. The Charter also did not require that the Members of the United Nations render moral or political judgment regarding the character of the government of a Member State. Refusal to allow a government exercising effective control to represent a State in the United Nations meant that the State was unrepresented. Such action was illegal and contrary to the Purposes and Principles of the Charter. Only the objective factors could be evaluated without violating the principles of the Charter, infringing the principle of sovereignty and of non-intervention in the domestic affairs of a State. It was easy to ascertain whether a government controlled all or almost all the territory of a State, but the other criteria, such as the general consent of the people, ability and willingness to carry out the purposes of the Charter, respect for human rights and fundamental freedoms, would involve so many subjective elements that an objective appraisal of the situation would be impossible. The criteria to be applied should be based, therefore, on facts, they should be as clear and as objective as possible and should exclude the moral issue.

It would be dangerous to seek to establish standards which in any way differed from those accepted in international law. The criteria in sub-paragraph 1 (b) of the draft resolution of the Sub-Committee were further incompatible with the provisions of Article 2 (7) of the Charter, for the General Assembly would be taking it upon itself to determine the extent of a government's authority and the way in which that government had been set up. That sub-paragraph also restated a prerequisite for admission of a new State which should not be applied explicitly in connexion with the recognition of representation of a Member State.

47. Certain representatives contended that the draft resolution submitted by Cuba sought to apply Article 4 to the question of the representation of States which were already Members of the United Nations and thus extended the scope of that Article beyond the range of the Charter and substituted the question of admission to membership for that of the representation of Member States. Any attempt to vest any special powers in that realm in the General Assembly would be invalid and illegal. The criteria set forth in the draft resolution submitted by Cuba were not contained in the Charter and had, therefore, no bearing either upon it or on the question of the representation of Member States. Neither the Charter nor the rules of procedure of the United Nations organs provided for or permitted the application of any specific conditions for the recognition of credentials. The rules of procedure were based on the juridical assumption, particularly applicable to the original Members of the United Nations, that the State in question had already been admitted to membership in accordance with the provisions of Article 4. In the matter of recognition of the representation of Member States, United Nations organs should follow the principle of admitting only representatives appointed by a government exercising effective power in the Member State concerned. Such a representation was its statutory right under the Charter. The question of recognition had already been settled by the Charter and by international law. The credentials could only be issued by a government exercising effective power over the territory of the State and it would be contrary to the provisions of the Charter for the General Assembly to attempt to take into account the changes of régime which States might undergo and to intervene when a change of régime occurred. The draft resolution submitted by Cuba would give the General Assembly the right to intervene in the domestic affairs of a sovereign Member State. It would thus illegally extend the competence of the General Assembly and would violate not only the Charter but also the generally recognized principles of international law. It was an expression of a tendency in the General Assembly to depart from the provisions of the Charter and the universally accepted rules of international law. The draft resolution proposed by the Sub-Committee would tend also to perpetuate existing abuses and to sanction practices contrary to the Charter and international law. It attempted to establish new

and binding provisions which were not to be found in the Charter and thus, in fact, would amend it without following the procedure prescribed in Articles 109 and 110. 63/

Decisions

At its 325th plenary meeting on 14 December 1950, the General Assembly considered the draft resolution recommended by the Ad Hoc Political Committee and adopted, 64/ by 25 votes to 10, with 10 abstentions, an amendment 65/ submitted by the representative of Egypt to insert between paragraphs 1 and 2 of the operative part of the draft resolution the following text:

"2. Recommends that when any such question arises, it should be considered by the General Assembly, or by the Interim Committee if the General Assembly is not in session".

At the same meeting the General Assembly adopted 66/ resolution 396 (V):
"Recognition by the United Nations of the representation of a Member State." 67/

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- 63/ For texts of relevant statements, see G A (V),
Ad Hoc Pol. Com., 18th mtg.: China, pp. 112 and 113; Cuba, pp. 111 and 112;
Denmark, p. 114; United Kingdom, pp. 116 and 117;
19th mtg.: Australia, pp. 123 and 124; Brazil, p. 121; USSR, pp. 121 and 122;
United States, pp. 119 and 120;
20th mtg.: Bolivia, p. 128; Costa Rica, p. 130; India, p. 127; Israel, pp. 132
and 133; Netherlands, p. 128; Union of South Africa, p. 131;
21st mtg.: Burma, pp. 140 and 141; Czechoslovakia, pp. 137 and 138; El Salvador,
p. 139; Greece, p. 142; Norway, pp. 138 and 139; Paraguay, p. 141; Sweden, p. 136;
Ukrainian SSR, pp. 135 and 136; Venezuela, p. 140;
22nd mtg.: Argentina, p. 145; Byelorussian SSR, p. 143; Dominican Republic,
p. 147; New Zealand, p. 146; Thailand, p. 147; Yugoslavia, p. 144;
23rd mtg.: Bolivia, p. 156; Ecuador, pp. 155 and 156; Pakistan, p. 157; Poland,
pp. 151-153; USSR, pp. 153 and 154; United States, pp. 154 and 155;
24th mtg.: Ukrainian SSR, p. 159;
57th mtg.: Cuba, p. 364; Belgium, p. 367; United States, p. 365;
58th mtg.: Australia, p. 375; Belgium, p. 374; Bolivia, p. 374; Byelorussian SSR,
p. 372; Chile, p. 371; Colombia, p. 375; Norway, p. 373; Poland, pp. 369 and 370;
Venezuela, pp. 371 and 372;
59th mtg.: Czechoslovakia, pp. 377 and 378; France, pp. 379 and 380; Mexico,
p. 380; Poland, p. 378; Sweden, p. 379; Uruguay, p. 380; Yugoslavia, p. 380;
60th mtg.: Cuba, p. 387; India, p. 386; Pakistan, p. 386; Ukrainian SSR, pp. 385
and 386; USSR, pp. 383 and 384;
Plen., vol. I, 325th mtg.: China, p. 677; Czechoslovakia, pp. 676 and 677;
Poland, p. 677; USSR, pp. 675 and 676.
64/ G A (V), Plen., vol. I, 325th mtg., p. 675.
65/ G A (V), Plen., vol. I, 325th mtg., p. 675, A/1582.
66/ G A (V), Plen., vol. I, 325th mtg., p. 675.
67/ For text, see annex II.

ANNEX I

Tabulation of some Agenda Items bearing upon Article 10 a/

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Relations of Members of the United Nations with Spain	(I/1)	5 b/	32 (I)
The question of the extradition and punishment of war criminals c/	(I/1)		3 (I)
Application of Article 27 of the Charter dealing with the method of voting in the Security Council	(I/2)	32	40 (I)
Calling of General Conference of Members of the United Nations under Article 109 of the Charter in order to eliminate the so-called "veto privilege"	(I/2)	35	40 (I)
Calling of General Conference of Members of the United Nations under Article 109 of the Charter for the purpose of reviewing the present Charter	(I/2)	43	40 (I)
Constituting and instructing a special committee to prepare for the consideration of the question of Palestine at the second regular session d/	(S-1)		106 (S-1) 107 (S-1)
Convocation of a general conference under Article 109 of the Charter to amend the privilege of the veto	(II)	23	117 (II)
Resolution of the second part of the first session of the General Assembly in relation to the exercise of the veto in the Security Council and the extent to which the recommendations contained in that resolution have been carried out	(II)	44	117 (II)
The problem of the independence of Korea	(II)	60	112 (II)

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- a/ This tabulation includes only agenda items which were referred by the General Assembly to its First and Ad Hoc Political Committees and agenda items of a political character which were considered directly by the Assembly.
- b/ Item No. 5 of "Items added to the Agenda during the First Part of the First Session of the General Assembly on the Recommendation of the General Committee".
- c/ The General Assembly, at its 22nd plenary meeting on 2 February 1946, decided to include this item in its agenda and to refer it to the First Committee. The item, however, was not formally recorded in the supplementary list of agenda items.
- d/ This was the only item on the agenda of the first special session of the General Assembly.

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Measures to be taken against propaganda and the inciters of a new war	(II)	61	110 (II)
Further consideration of the question of the future government of Palestine	(S-2)	7	185 (S-2) 186 (S-2) 189 (S-2)
Threats to the political independence and territorial integrity of Greece: reports of the United Nations Special Committee on the Balkans	(III/1)	15	193 C (III)
The problem of the independence of Korea: (a) Report of the United Nations Temporary Commission on Korea; (b) Report of the Interim Committee of the General Assembly	(III/1)	16	195 (III)
Palestine: Progress report of the United Nations Mediator on Palestine	(III/1)	67	194 (III)
The problem of the voting in the Security Council: (a) Report of the Interim Committee of the General Assembly; (b) Convocation of a general conference under Article 109 of the Charter in order to study the question of the veto in the Security Council	(III/2)	3 (17) ^{e/}	267 (III)
Question of the disposal of the former Italian colonies	(III/2)	13 (66) ^{e/}	266 (III)
United Nations Guard	(III/2)	14 (68) ^{e/}	270 (III)
Creation of an <u>ad hoc</u> committee to consider methods and procedures which would enable the General Assembly to discharge its functions more effectively and expeditiously	(III/2)	15 (74) ^{e/}	271 (III)
Having regard to the provisions of the Charter and of the peace treaties, the question of observance in Bulgaria and Hungary of human rights and fundamental freedoms, including questions of religious and civil liberties, with special reference to recent trials of Church leaders	(III/2)	18	272 (III)
Question of Indonesia	(III/2)	19	274 (III)

^{e/} The numbers in brackets indicate the order of items on the agenda of the first part of the third session of the General Assembly.

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Palestine: (a) Proposals for a permanent international régime for the Jerusalem area: report of the United Nations Conciliation Commission for Palestine; (b) Protection of the Holy Places: report of the United Nations Conciliation Commission for Palestine; (c) Assistance to Palestine refugees: report of the Secretary-General	(IV)	18	303 (IV) 302 (IV)
Question of the disposal of the former Italian colonies	(IV)	19	289 (IV)
Question of Indonesia	(IV)	20	301 (IV)
Threats to the political independence and territorial integrity of Greece: report of the United Nations Special Committee on the Balkans	(IV)	21	288 B (IV)
The problem of the independence of Korea: report of the United Nations Commission on Korea	(IV)	22	293 (IV)
United Nations Field Service: report of the Special Committee	(IV)	26	297 (IV)
Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms	(IV)	27	294 (IV)
Palestine:..... (b) Assistance to Palestine refugees: report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East; (c) Repatriation of Palestine refugees and payment of compensation due to them: implementation of General Assembly resolutions regarding this question; (d) Report of the United Nations Conciliation Commission for Palestine	(V)	20	393 (V) 394 (V)
Former Italian colonies: (a) Report of the United Nations Commissioner in Libya; (b) Reports of the Administering Powers in Libya; (d) Report of the United Nations Commission for Eritrea; (e) Report of the Interim Committee of the General Assembly on the report of the United Nations Commission for Eritrea	(V)	21	387 (V) 388 (V) 389 (V) 390 (V) 392 (V)

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Threats to the political independence and territorial integrity of Greece: (a) Report of the United Nations Special Committee on the Balkans; (b) Repatriation of Greek children: report of the Secretary-General	(V)	22	382 A (V) 382 C (V)
Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms: advisory opinion of the International Court of Justice	(V)	25	385 (V)
The appropriate adjustment of the frontiers between Egypt and the former Italian colony of Libya with particular reference to paragraphs 2 and 3 of Annex XI of the Treaty of Peace with Italy	(V)	59	391 (V)
Development of a twenty-year programme for achieving peace through the United Nations	(V)	60	494 (V)
Recognition by the United Nations of the representation of a Member State	(V)	61	396 (V)
Declaration on the removal of the threat of a new war and the strengthening of peace and security among nations	(V)	69	381 (V)
The question of Formosa <u>f/</u>	(V)	71	
Duties of States in the event of the outbreak of hostilities	(V)	72	378 B (V)
Question of the representation of China in the United Nations <u>g/</u>	(V)		490 (V) 501 (V)
Threats to the political independence and territorial integrity of Greece:..... ⁴⁴	(VI)	19	517 (VI)
(b) Repatriation of Greek children: reports of the Secretary-General and of the international Red Cross organizations			
Libya: (a) annual report of the United Nations Commissioner in Libya; (b) annual reports of the Administering Powers in Libya	(VI)	20	515 (VI)

f/ At the 442nd meeting of the First Committee on 7 February 1951 the debate on this item was adjourned *sine die*.

g/ This question was considered by the General Assembly but was not recorded in the list of agenda items.

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
The appropriate adjustment of the frontiers between Egypt and the former Italian colony of Libya, with particular reference to paragraphs 2 and 3 of Annex XI of the Treaty of Peace with Italy	(VI)	22	516 (VI)
Palestine: (a) Report of the United Nations Conciliation Commission for Palestine; (b) Assistance to Palestine refugees: report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East	(VI)	24	512 (VI) 513 (VI)
Development of a twenty-year programme for achieving peace through the United Nations	(VI)	54	608 (VI)
Appointment of an impartial international commission under United Nations supervision to carry out a simultaneous investigation in the Federal Republic of Germany, in Berlin, and in the Soviet Zone of Germany in order to determine whether existing conditions there make it possible to hold genuinely free elections throughout these areas	(VI)	65	510 (VI)
Korea: (b) Reports of the United Nations Agent General for Korean Reconstruction	(VII)	16	701 (VII)
Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East	(VII)	20	614 (VII)
Eritrea: report of the United Nations Commissioner in Eritrea	(VII)	21	617 (VII)
Repatriation of Greek children: reports of the Secretary-General and of the international Red Cross organizations	(VII)	23	618 (VII)
Use of the citation "Died for the United Nations" in respect to persons who, in certain circumstances, are killed in the service of the United Nations	(VII)	59	699 (VII)
Question of an appeal to the Powers signatories to the Moscow Declaration of 1 November 1943, for an early fulfilment of their pledges towards Austria	(VII)	63	613 (VII)

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
The question of race conflict in South Africa resulting from the policies of <u>apartheid</u> of the Government of the Union of South Africa	(VII)	66	616 (VII)
The Conciliation Commission for Palestine and its work in the light of the resolutions of the United Nations	(VII)	67	No resolution adopted
Complaint of violation by Arab States of their obligations under the Charter, United Nations resolutions and specific provisions of the General Armistice Agreements concluded with Israel, requiring them to desist from policies and practices of hostility and to seek agreement by negotiation for the establishment of peaceful relations with Israel	(VII)	68	619 (VII)
Complaint of non-compliance of States still detaining members of the Greek armed forces with the provisions of resolution 382 A (V), adopted by the General Assembly on 1 December 1950, recommending "the repatriation of all those among them who express the wish to be repatriated"	(VII)	70	702 (VII)
Question of impartial investigation of charges of use by United Nations Forces of bacteriological warfare	(VII)	73	706 (VII)
Complaint of the mass murder of Korean and Chinese prisoners of war by the United States military authorities on the island of Pongam	(VII)	76	No resolution adopted
Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East	(VIII)	19	720 (VIII)
The question of race conflict in South Africa resulting from the policies of <u>apartheid</u> of the Government of the Union of South Africa: report of the Commission appointed to study the racial situation in the Union of South Africa	(VIII)	21	721 (VIII)
Question of atrocities committed by the North Korean and Chinese Communist forces against United Nations prisoners of war in Korea	(VIII)	74	804 (VIII)
Question of the representation of China in the United Nations <u>h/</u>	(VIII)	,	800 (VIII)

h/ This question was considered by the General Assembly but was not recorded in the list of agenda items.

ANNEX II

Text of resolutions of the General Assembly treated
in the Analytical Summary of practiceResolution 40 (I): Voting Procedure in the Security Council

(Adopted by the General Assembly at its 61st plenary meeting on 13 December 1946,
by 36 votes to 6, with 9 abstentions)

The General Assembly,

Mindful of the Purposes and Principles of the Charter of the United Nations, and
having taken notice of the divergencies which have arisen in regard to the application
and interpretation of Article 27 of the Charter:

Earnestly requests the permanent members of the Security Council to make every effort,
in consultation with one another and with fellow members of the Security Council, to
ensure that the use of the special voting privilege of its permanent members does not
impede the Security Council in reaching decisions promptly;

Recommends to the Security Council the early adoption of practices and procedures,
consistent with the Charter, to assist in reducing the difficulties in the application
of Article 27 and to ensure the prompt and effective exercise by the Security Council
of its functions; and

Further recommends that, in developing such practices and procedures, the Security
Council take into consideration the views expressed by Members of the United Nations
during the second part of the first session of the General Assembly.

Resolution 117 (II): Convocation of a general conference under Article 109 of the
Charter to amend the privilege of the veto and resolution of the second part of the
first session of the General Assembly in relation to the exercise of the veto

(Adopted by the General Assembly at its 123rd plenary meeting on 21 November 1947, by
38 votes to 6, with 11 abstentions)

The General Assembly, in the exercise of its power to make recommendations relating
to the powers and functions of any organs of the United Nations (Article 10 of the
Charter),

Requests the Interim Committee of the General Assembly, in accordance with
paragraph 2 (a) of resolution 111 (II) of the General Assembly of 13 November 1947,
establishing that Committee, to:

1. Consider the problem of voting in the Security Council, taking into account all
proposals which have been or may be submitted by Members of the United Nations to the
second session of the General Assembly or to the Interim Committee;
2. Consult with any committee which the Security Council may designate to co-operate
with the Interim Committee in the study of the problem;
3. Report, with its conclusions, to the third session of the General Assembly, the
report to be transmitted to the Secretary-General not later than 15 July 1948 and by
the Secretary-General to the Member States and to the General Assembly;

Requests the permanent members of the Security Council to consult with one another on the problem of voting in the Security Council in order to secure agreement among them on measures to ensure the prompt and effective exercise by the Security Council of its functions.

Resolution 267 (III): The problem of voting in the Security Council

(Adopted by the General Assembly at its 195th plenary meeting on 14 April 1949, by 43 votes to 6, with 2 abstentions)

The General Assembly,

Having considered the report of its Interim Committee on the problem of voting in the Security Council, and

Exercising the authority conferred upon it by Article 10 of the Charter to discuss any question within the scope of the Charter or relating to the functions of any organ of the United Nations and to make recommendations to the Members of the United Nations and to the Security Council thereon,

1. Recommends to the members of the Security Council that, without prejudice to any other decisions which the Security Council may deem procedural, the decisions set forth in the attached annex i/ be deemed procedural and that the members of the Security Council conduct their business accordingly;

2. Recommends to the permanent members of the Security Council that they seek agreement among themselves upon what possible decisions by the Security Council they might forbear to exercise their veto, when seven affirmative votes have already been cast in the Council, giving favourable consideration to the list of such decisions contained in conclusion 2 of part IV of the report of the Interim Committee;

3. Recommends to the permanent members of the Security Council, in order to avoid impairment of the usefulness and prestige of the Council through excessive use of the veto:

(a) To consult together wherever feasible upon important decisions to be taken by the Security Council;

(b) To consult together wherever feasible before a vote is taken if their unanimity is essential to the effective action by the Security Council;

(c) If there is not unanimity, to exercise the veto only when they consider the question of vital importance, taking into account the interest of the United Nations as a whole, and to state upon what ground they consider this condition to be present;

4. Recommends to the Members of the United Nations that in agreements conferring functions on the Security Council such conditions of voting within that body be provided as would to the greatest extent feasible exclude the application of the rule of unanimity of the permanent members.

i/ For text of annex, see G A (III/2), Resolutions, p. 8.

Resolution 396 (V): Recognition by the United Nations of the representation of a Member State

(Adopted by the General Assembly at its 325th plenary meeting on 14 December 1950, by 36 votes to 6, with 9 abstentions)

The General Assembly,

Considering that difficulties may arise regarding the representation of a Member State in the United Nations and that there is a risk that conflicting decisions may be reached by its various organs,

Considering that it is in the interest of the proper functioning of the Organization that there should be uniformity in the procedure applicable whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations, and this question becomes the subject of controversy in the United Nations,

Considering that, in virtue of its composition, the General Assembly is the organ of the United Nations in which consideration can best be given to the views of all Member States in matters affecting the functioning of the Organization as a whole.

1. Recommends that, whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case;
2. Recommends that, when any such question arises, it should be considered by the General Assembly, or by the Interim Committee if the General Assembly is not in session;
3. Recommends that the attitude adopted by the General Assembly or its Interim Committee concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies;
4. Declares that the attitude adopted by the General Assembly or its Interim Committee concerning any such question shall not of itself affect the direct relations of individual Member States with the State concerned;
5. Requests the Secretary-General to transmit the present resolution to the other organs of the United Nations and to the specialized agencies for such action as may be appropriate.

ARTICLE 11

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TEXT OF ARTICLE 11

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

INTRODUCTORY NOTE

1. Article 11 contains provisions specifying the competence and powers of the General Assembly with regard to matters concerning the maintenance of international peace and security. The powers granted to the General Assembly by Article 11, paragraphs 1 and 2, are powers of consideration, discussion and recommendation.

2. Paragraph 1 empowers the General Assembly to consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and to make recommendations to: (a) the Members of the United Nations; or (b) the Security Council; or (c) the Members of the United Nations and the Security Council.

3. Paragraph 2 delimits the competence of the General Assembly with regard to questions relating to the maintenance of international peace and security.

4. The General Assembly may discuss any such question submitted by: (a) a Member of the United Nations; (b) the Security Council; (c) a non-member State. The non-member State must, however, accept in advance, in accordance with the provisions of Article 35 (2), the obligations of pacific settlement provided in the Charter.

5. The General Assembly is authorized further to make recommendations with regard to any question relating to the maintenance of international peace and security, except as stipulated in Article 12, that is to say, the General Assembly cannot make a recommendation if the Security Council is exercising the functions assigned to it by the Charter with regard to that question, unless the Security Council should request the General Assembly to make a recommendation.

6. The General Assembly is under the obligation to refer, either before or after discussion, to the Security Council "any such question on which action is necessary".

7. The General Assembly may make its recommendations under paragraph 2 to: (a) the State or States concerned; (b) the Security Council; (c) the State or States concerned and the Security Council. The State concerned may be a Member of the United Nations or a non-Member State. Of all Articles dealing with the functions and powers of the General Assembly, it is only Article 11 (2) that expressly mentions States which are not Members of the United Nations in connexion with recommendations of the General Assembly.

8. By paragraph 3 the Assembly is authorized to call the attention of the Security Council to situations which are likely to endanger international peace and security. 1/ Under the provision of paragraph 4 the powers of the General Assembly set forth in Article 11 "shall not limit the general scope of Article 10".

9. Three main questions have arisen in connexion with Article 11 in the proceedings of the General Assembly concerning matters bearing upon the maintenance of international peace and security. One of these has been the relationship between the responsibilities of the General Assembly and the primary responsibility conferred on the Security Council by Article 24 in order to "ensure prompt and effective action by the United Nations". A second question arising in the same connexion has concerned the meaning and scope of the last provision of Article 11 (2). A third question has been the extent of the competence and powers of the General Assembly with regard to questions "on which action is necessary".

10. These three questions are different facets of the fundamental question of the delimitation of functions and powers assigned by the Charter to the General Assembly and the Security Council on matters concerning the maintenance of international peace and security. The fact, however, that either in the text of proposals or resolutions or in the constitutional discussion relating thereto particular emphasis has been placed on one or the other of these three inter-related issues, warrants the separate treatment given to each of them in the Analytical Summary of Practice.

11. The resolutions selected to illustrate the practice of the General Assembly in connexion with these three questions are indicated under the questions discussed. They have been chosen because of the significance of their provisions, their legislative history and the amount of constitutional discussion involved in the proceedings. In accordance with the general principles applied in the preparation of the Repertory, the reference to such resolutions in this study does not imply any pronouncement either on the question of the Charter authority under which the Assembly acted in their adoption or, in particular, on the question of whether the Assembly adopted them under Article 11, unless expressly so stated in the resolution.

1/ In resolution 181 (II) concerning the future government of Palestine, the General Assembly requested the Security Council to consider "if circumstances during the transitional period require such consideration, whether the situation in Palestine constitutes a threat to the peace" and "to determine as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution". The provision of Article 11 (3) was, however, not expressly invoked or referred to in this or any other resolution of the General Assembly. For the constitutional discussion concerning resolution 181 (II); see also in this Repertory under Article 14.

12. Since in most cases the same resolution is significant for more than one of the questions examined, and, on the other hand, several resolutions are of significance for the same question, the following method has been adopted in order to avoid duplication in so far as possible: the material containing information on the genesis of each resolution is presented separately from the material summarizing the constitutional discussion relating thereto. The latter has been broken up for treatment under the relevant questions, while the former has been treated as a unit. Thus, a précis of the history of each resolution will be found only in one place, that is to say, under the question in connexion with which the resolution is first mentioned, while relevant constitutional discussion connected with the same resolution may appear under two or even the three questions analysed in the Analytical Summary of Practice. The full text of the resolutions is included in annex III. ^{2/}

13. The General Survey consists of (a) two tabulations, prepared in accordance with the criteria stated in paragraphs 17 and 18, and which, in the present study, are appended as annexes I and II; (b) an indication of the addressees of recommendations of the General Assembly; and (c) a brief review of the practice of the General Assembly with respect to disarmament and the regulation of armaments, with a tabulation of the relevant positive and negative decisions appended as annex III. ^{3/} As indicated in the General Survey, the annexes are prepared solely to give a general view of the range and types of action of the General Assembly bearing upon Article 11. ^{4/} Consequently, no special constitutional significance should be attached to them.

14. Most of the resolutions, the provisions of which have been summarized in the tabulation contained in annex II, are not treated in the Analytical Summary of Practice; in some cases, because no constitutional questions were involved, although incidental references to Article 11 and other Articles may have been made in the proceedings, and in other cases because the main questions involved are relevant to other Articles. Thus, for instance, decisions concerning the Tunisian question and the question of Morocco, where constitutional discussion centred mainly on the provisions of Article 2 (7), and decisions in connexion with the problem of the independence of Korea with regard to which Article 107 was the subject of constitutional discussion, are treated under those Articles.

I. GENERAL SURVEY

A. Criteria applied in the preparation of annexes I and II

15. In most cases the resolutions of the General Assembly listed in annex II have not contained express reference to any Article. Nor are such references often found in applications to place a specific item on the agenda of the General Assembly. Moreover, Article 11 has frequently been invoked in the proceedings not alone but together with Article 10, which enables the Assembly to discuss any matters "within the scope of the present Charter" and to make recommendations on any such matters except as provided in Article 12. Furthermore, the terms of Article 11 (1) are closely akin to the terms of Article 13 (1) (a): these Articles have often been jointly invoked in the proceedings of the Assembly, as have been Articles 11 and 14.

^{2/} See also paragraphs of resolution 193 A (III) included in footnote 138, below.

^{3/} For the decisions of the Security Council in connexion with disarmament and the regulation of armaments see, in this Repertory, under Article 26.

^{4/} See also in this Repertory under Articles 10 and 14 for other resolutions relating primarily to those Articles but also having some relation to Article 11.

16. The above shows clearly the impracticability of attempting to classify the decisions of the General Assembly under particular Articles of the Charter. the tabulation of agenda items included in annex I should therefore not be regarded as implying any conclusion as to the classification of such items and still less as implying that the resolutions adopted by the Assembly under those agenda items, resolutions from which the tabulation of provisions contained in annex II is drawn, necessarily constitute an application of Article 11. Both tabulations have been compiled merely for convenience of presentation, in order to enable the reader to have an over-all view of the range and types of action of the General Assembly bearing upon the provisions of Article 11.

17. The criteria applied in the preparation of the list of agenda items which appears in annex I, have been the following:

The list comprises:

(a) agenda items expressly or implicitly brought before the General Assembly under Article 11;

(b) agenda items in connexion with which the General Assembly took decisions with express or implicit reference to Article 11; and

(c) other agenda items which, although not meeting the above conditions, seem, because of their subject-matter and in the light of the relevant proceedings, to be either in whole or in their major part, more closely related to Article 11 than to any other Article concerned with the functions and powers of the General Assembly.

18. The resolutions of the General Assembly taken into account for the tabulation of provisions contained in annex II have been those which the Assembly adopted in connexion with the agenda items included in annex I.

B. Addressees of recommendations of the General Assembly

19. The practice of the General Assembly with regard to the addressees 5/ of its recommendations may be summarized as indicated in the following two paragraphs.

20. The General Assembly has addressed recommendations, in its resolutions relating to the general principles of co-operation in the maintenance of international peace and security, to Members 6/ of the United Nations and to the Security Council. 7/ In its resolutions relating to the principles governing disarmament and regulation of armaments, recommendations have been addressed not only to specific Members or to all Members 8/ of the United Nations, or to the Security Council, 9/ or to both, 10/ but also to Members and non-members 11/ of the United Nations simultaneously.

5/ See paras. 2 and 7, above.

6/ G A resolution 268 D (III).

7/ G A resolution 269 B (III).

8/ G A resolutions 191 (III), 299 (IV), 300 (IV) and 715 (VIII).

9/ G A resolutions 42 (I) and 192 (III).

10/ G A resolutions 41 (I) and 300 (IV).

11/ In this connexion the General Assembly addressed its recommendations to "every nation" (resolutions 290 (IV) and 380 (V)); to "all nations" (resolutions 192 (III) and 299 (IV)); and to "Governments" (resolution 299 (IV)).

21. In resolutions relating to the maintenance of international peace and security, recommendations have been addressed by the General Assembly as follows: to specific Members 12/ of the United Nations or to all Members 13/ of the United Nations; to specific non-members 14/ or to non-members 15/ generally; to Members of the United Nations and non-members 16/ simultaneously. A recommendation has been addressed by the General Assembly to a Government 17/ not represented in the United Nations. The General Assembly has also addressed its recommendations to the Security Council, 18/ or to certain States concerned and the Security Council. 19/

C. The practice of the General Assembly with respect to disarmament and the regulation of armaments

22. Under the provisions of Article 11, the General Assembly is authorized to consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments. In this General Survey the relevant resolutions of the General Assembly are examined with a view to presenting a brief statement of the modalities whereby the Assembly has sought to discharge its functions in this sphere. While refraining from entering into any analysis of the substantive content of these resolutions, the General Survey indicates the constitutional forms envisaged therein for the implementation of Article 11 with respect to disarmament.

23. The efforts of the United Nations with respect to disarmament and the regulation of armaments were initiated by two decisions of the General Assembly adopted at its first session, resolutions 1 (I) and 41 (I).

24. The first resolution concerned the solution of the problems raised by the discovery of atomic energy. The second, entitled "Principles governing the general regulation and reduction of armaments", made recommendations to the Security Council concerning the formulation of practical measures for the general regulation and reduction of armaments in accordance with certain general considerations concerning the elements of any United Nations scheme of disarmament and concerning the methods for making it effective. A third decision of a general character, resolution 502 (VI), built upon the experience of the period between the first and sixth sessions in setting forth further general considerations for the guidance of the body charged with responsibility for submitting disarmament proposals.

12/ G A resolutions 109 (II), 190 (III), 193 A and B (III), 288 A (IV), 337 C (V) and 711 A (VII).

13/ G A resolutions 39 (I), 377 A (V), 503 A (VI) and 703 (VII).

14/ G A resolutions 109 (II), 193 A and B (III) and 288 A (IV).

15/ G A resolutions 503 A (VI) and 703 (VII).

16/ In this connexion the General Assembly addressed its recommendations to: "all Members of the United Nations and to all other States" (resolutions 193 A (III) and 288 A (IV)); "all States" (resolutions 707 (VII) and 717 (VIII)); "the States concerned" (resolution 382 A (V)); "all States and authorities" (resolution 498 (V)); "a state" (resolution 378 (V)); "every State" (resolution 500 (V)); "all governments and authorities" (resolution 377 A, section B (V)); "the parties" (resolutions 611 (VII) and 612 (VII)).

17/ G A resolution 498 (V).

18/ G A resolutions 114 (II), 377 B (V) and 503 (VI).

19/ G A resolution 39 (I).

20/ This section of the General Survey, as well as the tabulation of decisions of the General Assembly with respect to disarmament and the regulation of armaments appended as annex III, cover decisions of the General Assembly up to and including those taken at its ninth session.

25. From the first to the sixth sessions, the work of the United Nations in respect of disarmament was organized to deal separately with the problems presented by the discovery of atomic energy and with those presented by conventional armaments. With the adoption of resolution 502 (VI), the task of formulating proposals on these two aspects of disarmament was consolidated.

26. While the Security Council is directly charged by the Charter (Article 26) with responsibility for the formulation of plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments, the efforts of the Council in this field have been made within the framework established by the initial decisions of the General Assembly already mentioned. Of the three subsidiary Commissions specially charged at one time or another with responsibilities for formulating proposals concerning disarmament, two (the Atomic Energy Commission, created by resolution 1 (I) and dissolved by resolution 502 (VI), and the Disarmament Commission, created by the latter resolution) have been subsidiary organs of the General Assembly, though with special responsibilities to and relations with the Security Council, as described in paragraphs 7 and 8 below; the third (the Commission for Conventional Armaments, created by the Security Council resolution of 13 February 1947 and dissolved by the Security Council at its 571st meeting on 30 January 1952) has been a subsidiary organ of the Security Council. It was created, however, to assist the Security Council in implementing General Assembly resolution 41 (I) which the Security Council had accepted by a formal decision at its 90th meeting on 9 January 1947 and again by its resolution establishing the Commission for Conventional Armaments.

27. Apart from the special case of Canada, which was a member of the Atomic Energy Commission and is now a member of the Disarmament Commission even when not a member of the Security Council, the membership of all three subsidiary organs mentioned has always been the same as that of the Council.

28. Resolution 1 (I) establishing the Atomic Energy Commission required that body to account to the Security Council in matters affecting security and to make its reports and recommendations to the Council, which would transmit them to the General Assembly, Member States or other United Nations organs. The Commission for Conventional Armaments was a subsidiary organ of the Security Council, which established it, gave it its terms of reference, approved its plan of work and considered its reports and recommendations. The present Disarmament Commission was established by the General Assembly "under the Security Council" to which, as well as to its parent body, it reports. The reports and recommendations of the Atomic Energy Commission and the Commission for Conventional Armaments have come before the General Assembly, for consideration, through the intermediary of the Security Council which has transmitted them to the Assembly after its own consideration of them.

29. In setting into operation initially this system of preparing proposals concerning disarmament through the Security Council and bodies guided by and reporting to or subsidiary to it, the General Assembly has in both resolution 1 (I) and resolution 41 (I) adverted to the primary responsibility (Article 24 of the Charter) of the Security Council for the maintenance of international peace and security. ^{21/} The General Assembly has also recognized the connexion between the maintenance of

^{21/} In the debates preceding the adoption of the latter of these resolutions repeated reference was also made by various delegations to the responsibility of the Security Council under Article 26 for the preparation of plans for a system of regulation of armaments.

international peace and security and disarmament in paragraph 1 of resolution 41 (I). In paragraph 7 of that resolution, it stressed the connexion between disarmament and the placing at the disposal of the Council of the armed forces mentioned in Article 43 of the Charter.

30. In resolution 41 (I) also, the General Assembly provided that:

"6. To ensure the adoption of measures for the early general regulation and reduction of armaments and armed forces, for the prohibition of the use of atomic energy for military purposes and the elimination from national armaments of atomic and all other major weapons adaptable now or in the future to mass destruction, and for the control of atomic energy to the extent necessary to ensure its use only for peaceful purposes,

"There shall be established, within the framework of the Security Council, which bears the primary responsibility for the maintenance of international peace and security, an international system, as mentioned in paragraph 4, operating through special organs, which organs shall derive their powers and status from the convention or conventions under which they are established."

31. The decision that the control organs for the regulation of armaments should be established within the framework of the Security Council was renewed in resolution 502 (VI), paragraph 4 of which directs the Disarmament Commission when preparing proposals for the regulation, limitation and balanced reduction of all armed forces and all armaments, for the elimination of all major weapons adaptable to mass destruction, and for effective international control of atomic weapons and the use of atomic energy for peaceful purposes only,

"to formulate plans for the establishment, within the framework of the Security Council, of an international control organ (or organs) to ensure the implementation of the treaty (or treaties)."

32. The terms of reference of the Atomic Energy Commission contained no provisions concerning the ultimate adoption by States of its proposals, beyond the provision that its reports and recommendations should be made to the Security Council and transmitted by the latter in appropriate cases to the General Assembly, the Members of the United Nations, the Economic and Social Council and other organs within the framework of the United Nations.

33. Resolution 41 (I), which was concerned with all armaments and armed forces, provided that the practical measures to be formulated by the Security Council, acting upon the General Assembly's recommendations, should be submitted by the Secretary-General to the Members of the United Nations for consideration at a special session of the General Assembly, and that the treaties or conventions approved by the General Assembly should be submitted to the signatory States for ratification in accordance with Article 26 of the Charter.

34. Resolution 502 (VI) provided that a conference of all States should be convened to consider the proposals for a draft treaty (or treaties) prepared by the Disarmament Commission as soon as the work of the Commission had progressed to a point where, in its judgement, any part of its programme was ready for submission to Governments, and requested the Secretary-General to convene such a conference when so advised by the Commission.

35. The General Assembly, while on occasion expressing approval (resolutions 191 (III) and 300 (IV)) of various findings, recommendations and proposals made by subsidiary disarmament planning organs which had failed to meet with

approval in the Security Council, has at the same time stressed the importance of unanimous agreement to any scheme of disarmament. In resolution 191 (III) it expressed regret that unanimous agreement had not yet been reached and urged the six sponsors of resolution 1 (I) (the permanent members of the Security Council and Canada) to meet together and consult in order to determine if there existed a basis for agreement on the international control of atomic energy and to report the results of their consultation to the General Assembly.

36. This call to the permanent members of the Atomic Energy Commission to consult with a view to achieving agreement was renewed in resolution 299 (IV) with a request that they explore all possible avenues and examine all concrete suggestions. In resolution 300 (IV) relating to conventional armaments, the General Assembly noted that unanimity among the permanent members of the Security Council, which was essential for the implementation of proposals approved by the Assembly, had not been achieved, recommended therefore that the Security Council continue its study of the regulation and reduction of conventional armaments.

37. Resolution 496 (V) which established a committee of twelve (the members of the Security Council and Canada) to consider the advisability of merging the functions of the Atomic Energy Commission and the Commission on Conventional Armaments in a new disarmament commission, likewise contained a recognition by the General Assembly that the regulation and reduction of armaments "must be based on unanimous agreement".

38. When considering the report of the Committee of Twelve, 22/ the First Committee of the General Assembly unanimously adopted the following resolution: 23/

"The First Committee of the General Assembly,

"Noting the draft resolution submitted by the delegations of France, the United Kingdom and the United States on 'Regulation, limitation and balanced reduction of all armed forces and armaments' (A/C.1/667),

"Noting the amendments to the aforementioned draft resolution submitted by the delegation of the Union of Soviet Socialist Republics (A/C.1/668),

"Noting the universal desire for peace, for the regulation, limitation and balanced reduction of all armed forces and all armaments, and for the abolition of atomic and other weapons of mass destruction,

"Noting with concern the divergence of views as to the best procedure for attaining this objective,

"Recognizing that no agreement on regulation, limitation and reduction of arms and armed forces is possible without the fullest co-operation and support of France, the Union of Soviet Socialist Republics, the United Kingdom and the United States,

"1. Resolves to establish a sub-committee consisting of:

"(i) The President of the General Assembly as Chairman; and

22/ G A (VI), Annexes, a.i. 66 and 16, p. 2, A/1922.

23/ Ibid., p. 14, A/2025, para. 9.

"(11) The representatives of France, the Union of Soviet Socialist Republics, the United Kingdom and the United States, with a view to formulating proposals which it could agree to recommend to the First Committee.

"In its work the sub-committee shall take into consideration the draft resolution submitted by France, the United Kingdom and the United States (A/C.1/667), the amendments to that draft resolution proposed by the Union of Soviet Socialist Republics (A/C.1/668), and the debates in the First Committee on the items under discussion, as well as any new proposals made by any of its members during the course of its deliberations;

"2. Directs the sub-committee to make a report to the First Committee by 10 December 1951;

"3. Resolves to suspend discussion on items 16 and 66 of the agenda until the report of the sub-committee is received;

"4. Urges upon all concerned to give their fullest co-operation and support to the sub-committee, so that through the reduction and limitation of armaments and the abolition of weapons of mass destruction the fear of war may be dispelled, and the hope of providing a better life for the average man may be restored to anxious humanity;

"5. Requests the Secretary-General to furnish such expert staff and facilities as the sub-committee may find necessary for carrying out its task."

39. In resolution 502 (VI) establishing the present Disarmament Commission, and stating the principles by which it should be guided, the General Assembly declared that a genuine system for disarmament must be accepted by all nations whose military resources are such that their failure to accept would endanger the system. In the principles for the guidance of the Commission, it was stated that the treaty or treaties in which the Commission's proposals were to be embodied should provide what States must become parties thereto before the treaty (or treaties) should enter into force. Further to the problem of achieving agreement, the Commission was directed "to consider methods according to which States can agree by negotiation among themselves, under the auspices of the Commission" concerning certain of the matters contained in the resolution.

40. Again in resolution 715 (VIII) the General Assembly suggested that

"the Disarmament Commission study the desirability of establishing a sub-committee consisting of representatives of the Powers principally involved, which should seek in private an acceptable solution and report to the Disarmament Commission as soon as possible, in order that the Commission may study and report on such a solution to the General Assembly and to the Security Council not later than 1 September 1954;"

Such a sub-committee was established and met in London in May and June 1954. 24/ In resolution 808 (IX) the General Assembly concluded that a further effort should be made to reach agreement and suggested that the Disarmament Commission reconvene the Sub-Committee.

24/ The Sub-Committee's report to the Disarmament Commission was annexed to the Commission's report (Disarmament Commission Suppl. for July, Aug. and Sept. 1954, DC/55, and Suppl. for April, May and June 1954, DC/53 and DC/44 and Corr.1) to the General Assembly.

41. Resolutions 1 (I) and 41 (I) setting forth the objectives of disarmament and its essential features and initiating the steps for their achievement were adopted unanimously. Resolution 715 (VIII) setting forth the objectives of a disarmament programme and suggesting the establishment by the Disarmament Commission of a sub-committee of representatives of the Powers principally involved was adopted without a negative vote, though with 5 abstentions. Resolution 808 (IX), which restated the objectives of a disarmament programme and suggested the reconvening of the Sub-Committee, was adopted unanimously.

42. While the General Assembly, as indicated in paragraph 14 above, has by a majority approved certain proposals made by the Atomic Energy Commission and the Commission for Conventional Armaments and has by a majority rejected certain others made by particular delegations, the effect of this has not been to prevent the further consideration of the rejected proposals or any other proposals in the various special bodies established to deal with disarmament, in the Security Council or in the General Assembly itself. Moreover, in resolution 502 (VI) the General Assembly included among the principles laid down for the guidance of the Disarmament Commission a directive (paragraph 3 (c)) to the effect that "The Commission shall be ready to consider any proposals or plans for control that may be put forward involving either conventional armaments or atomic energy".

43. At its 363rd plenary meeting, the General Assembly adopted resolution 504 (VI) which was consequent on the provision quoted in the previous paragraph. The operative paragraphs of the resolution read as follows:

"1. Decides to refer to the Disarmament Commission the proposals contained in paragraphs 3 to 7 inclusive of document A/C.1/698 /a draft resolution submitted by the USSR, together with any other proposals which may be made during the present session of the General Assembly on matters falling within the terms of reference of the Disarmament Commission;

"2. Decides also to transmit to the Disarmament Commission for its information the records of the meetings [487th - 493rd] of the First Committee at which this item was discussed."

44. By resolution 714 (VIII) the General Assembly referred to the Disarmament Commission, for such consideration as was appropriate under its terms of reference, a draft resolution 25/ submitted by the USSR, together with the records of the First Committee's discussions. The USSR draft resolution called on all States which had not acceded to or ratified the Geneva Protocol of 17 June 1925 for the prohibition of the use of bacterial weapons to accede to the Protocol or ratify it.

45. Similarly, in resolution 808 (IX), after referring in the preamble to certain documents annexed to the fourth report 26/ of the Disarmament Commission and a draft resolution 27/ of the USSR, the General Assembly requested the Disarmament Commission to seek an acceptable solution of the disarmament problem, "taking into account the

25/ G A (VII), Annexes, a.i. 24, A/C.1/L.67.

26/ Disarmament Commission, Suppl. for July, Aug. and Sept. 1954, DC/55, and ibid., Suppl. for April, May and June 1954, DC/53 and DC/44 and Corr.1.

27/ G A (IX), Annexes, a.i. 20 and 68, A/C.1/750.

various proposals referred to in the preamble of the present resolution and any other proposals within the Commission's terms of reference". 28/

46. The "principles governing disarmament and the regulation of armaments" have been adverted to only once in a decision of the General Assembly, namely in resolution 41 (I) which contains a preambular reference to Article 11 of the Charter and bears the title "Principles governing the general regulation and reduction of armaments". Thereafter, the term "principles" does not appear again except in resolution 502 (VI), paragraph 3 of which sets forth "principles" for the guidance of the Disarmament Commission.

47. The following were described as "essential" to the general regulation and reduction of armaments in resolution 41 (I), paragraphs 2, 3 and 5.

2. "...measures ... to provide for the general regulation and reduction of armaments and armed forces and to assure that such regulation and reduction of armaments and armed forces will be generally observed by all participants and not unilaterally by only some of the participants ..."

3. "...the expeditious fulfilment by the Atomic Energy Commission of its terms of reference as set forth in section 5 of the General Assembly resolution of 24 January 1946 [resolution 1 (I)]".

5. "...the provision of practical and effective safeguards by way of inspection and other means to protect complying States against the hazards of violations and evasions."

48. Again, in resolution 192 (III) the General Assembly considered that "no agreement is attainable on any proposal for the reduction of conventional armaments and armed forces so long as each State lacks exact and authenticated information concerning the conventional armaments and armed forces of other States, so long as no convention has been concluded regarding the types of military forces to which such reduction would apply, and so long as no organ of control has been established".

49. In resolution 496 (V) the General Assembly expressed its recognition that "to be effective" the regulation and reduction of armaments must meet certain requirements relating to the weapons to be covered, the extent of agreement, the nations included, and the safeguards basic to any plan.

50. In resolution 502 (VI) the General Assembly renewed its expression of the requirements which it had recognized in resolution 496 (V) as necessary to disarmament and the regulation of armaments. It expressed the belief that a "necessary means" to the end of the development of an effective collective security system and a progressive reduction of the armed forces and armaments of the world was "the development by the United Nations of comprehensive and co-ordinated plans, under international control, for the regulation, limitation and balanced reduction of all armed forces and all armaments, for the elimination of all major weapons adaptable to mass destruction, and

28/ By resolution 808 B (IX) the Assembly referred to the Disarmament Commission a draft resolution submitted by the representative of India, A/C.I/L.100/Rev.1. By resolution 808 C (IX) it so referred a draft resolution submitted by Australia and the Philippines, A/C.I/L.101/Rev.1.

for the effective international control of atomic energy to ensure the prohibition of atomic weapons and the use of atomic energy for peaceful purposes only". 29/

51. The considerations quoted from resolution 502 (VI) in the preceding paragraph were restated without substantial change in resolution 715 (VIII), in which paragraph 1 of the operative part related them to the General Assembly's desire

"to reach agreement as early as possible on a comprehensive and co-ordinated plan, under international control, for the regulation, limitation and reduction of all armed forces and all armaments, for the elimination and prohibition of atomic, hydrogen, bacterial, chemical and all such other weapons of war and mass destruction, and for the attainment of these ends through effective measures".

52. In resolution 808 (IX) the General Assembly concluded unanimously that the draft international disarmament convention should provide for:

"(a) The regulation, limitation and major reduction of all armed forces and all conventional armaments;

"(b) The total prohibition of the use and manufacture of nuclear weapons and weapons of mass destruction of every type, together with the conversion of existing stocks of nuclear weapons for peaceful purposes;

29/ The General Assembly also included in resolution 502 (VI) (adopted by 42 votes to 5, with 7 abstentions), the following principles for the guidance of the Disarmament Commission:

"(a) In a system of guaranteed disarmament there must be progressive disclosure and verification on a continuing basis of all armed forces — including paramilitary, security and police forces — and all armaments including atomic;

"(b) Such verification must be based on effective international inspection to ensure the adequacy and accuracy of the information disclosed; this inspection to be carried out in accordance with the decisions of the international control organ (or organs) to be established;

"(c) The Commission shall be ready to consider any proposals or plans for control that may be put forward involving either conventional armaments or atomic energy. Unless a better or no less effective system is devised, the United Nations plan for the international control of atomic energy and the prohibition of atomic weapons should continue to serve as the basis for the international control of atomic energy to ensure the prohibition of atomic weapons and the use of atomic energy for peaceful purposes only;

"(d) There must be an adequate system of safeguards to ensure observance of the disarmament programme, so as to provide for the prompt detection of violations while at the same time causing the minimum degree of interference in the internal life of each country;

"(e) The treaty (or treaties) shall specifically be open to all States for signature and ratification or adherence. The treaty (or treaties) shall provide what States must become parties thereto before the treaty (or treaties) shall enter into force ..."

"(c) The establishment of effective international control, through a control organ with rights, powers and functions adequate to guarantee the effective observance of the agreed reductions of all armaments and armed forces and the prohibition of nuclear and other weapons of mass destruction, and to ensure the use of atomic energy for peaceful purposes only;

"The whole programme to be such that no State would have cause to fear that its security was endangered".

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the relationship between the responsibilities of the General Assembly and the primary responsibility of the Security Council with regard to matters concerning the maintenance of international peace and security

53. This question has been the subject of substantial constitutional discussion in the proceedings of the General Assembly during the consideration of the following agenda items:

- a. (i) Establishment of an interim committee of the General Assembly on peace and security; 30/
- (ii) Advisability of establishing a permanent committee of the General Assembly: report of the Interim Committee of the General Assembly; 31/
- (iii) Report of the Interim Committee of the General Assembly:
... (b) Constitution, duration and terms of reference of the Interim Committee; 32/
- b. United action for peace; 33/

c. Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter: report of the Collective Measures Committee. 34/

54. The constitutional discussion relating to this question was mainly concerned with the course to be taken in the event that the Security Council was prevented from exercising its primary responsibility with regard to the maintenance of international peace and security; that is to say, whether the General Assembly could assume this responsibility, and to what extent it would be competent to discharge such responsibility.

55. This question has been approached from two different points of view. The thesis emphasizing that the rule of unanimity of the permanent members of the Security Council represents one of the fundamental principles of the Charter and finds its expression in their principal joint and mutual responsibility for the maintenance of international

30/ Agenda item 59, considered during the second session.

31/ Agenda item 18, considered during the first part of the third session.

32/ Agenda item 25, considered during the fourth session.

33/ Agenda item 68, considered during the fifth session.

34/ Agenda item 18, considered during the sixth and seventh sessions.

peace and security, though not contested in itself, has been met with arguments stressing that the lack of unanimity among the permanent members of the Security Council often had paralysed this organ in taking the action required. The contention that in such cases it was necessary for the permanent members to continue their endeavours to find common grounds for reaching an agreement has been disputed by representatives who held that in a similar situation the United Nations could not remain inactive and that the General Assembly must exercise its "secondary" responsibility for the maintenance of international peace and security, implied by the "primary" but not exclusive responsibility of the Security Council in this sphere.

56. The proceedings of the General Assembly on the items listed in paragraph 53 above are reviewed below. In view of the similarity of the arguments bearing upon the Charter which are advanced during the discussion of the three items dealing with the Interim Committee of the General Assembly, the relevant views stated in the three cases are summarized together. Relevant constitutional discussion in connexion with the items "United action for peace" and "Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter" is also presented together for the same reasons.

1. Resolutions 111 (II), 196 (III) and 295 (IV)

a. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 111 (II)

57. By a letter 35/ dated 17 September 1947, the senior representative of the United States to the General Assembly requested that the item "establishment of an interim committee of the General Assembly on peace and security" be included in the agenda of the second regular session of the General Assembly.

58. At its 91st plenary meeting on 23 September 1947, the General Assembly decided 36/ to include the item in its agenda. The First Committee considered the question at its 74th to 78th meetings and at its 94th to 97th meetings.

59. At the 74th meeting of the First Committee the representative of the United States explained 37/ that the proposal of his delegation envisaged the establishment of a subsidiary organ of the General Assembly which would function between sessions in order to assist the Assembly in the discharge of the responsibilities conferred upon it by the Charter in the field of peace and security, would consider questions arising within the purview of Article 14 or such questions as might be brought before the General Assembly by the Security Council pursuant to Article 11 (2) and would make recommendations thereon to the General Assembly. The proposed subsidiary organ was also to consider the general principles of co-operation in the maintenance of international peace and security under Article 11 (1), and to initiate studies and make recommendations for the promotion of international co-operation in the political field under Article 13 (1) (a).

60. Subsequently, the representative of the United States submitted to the First Committee a draft resolution 38/ to which various amendments were proposed. A draft resolution 39/ was also submitted by the representative of the United Kingdom.

35/ G A (II), General Com., p. 36, annex 1 b (A/EUR/85).

36/ G A (II), Plen., vol. I, 91st mtg., pp. 299 and 300.

37/ G A (II), 1st Com., 74th mtg., pp. 129-132.

38/ G A (II), 1st Com., pp. 609 and 610, annex 17 a (A/C.1/196).

39/ G A (II), 1st Com., pp. 612 and 613, annex 17 d (A/C.1/215).

61. At its 78th meeting, the First Committee adopted 40/ by 38 votes to none, with 3 abstentions, a draft resolution 41/ submitted by Australia, as amended 42/ by the Chairman, establishing a sub-committee to examine the United States draft resolution, any amendments thereto, and other proposals, and to report thereon with recommendations to the Committee. The Sub-Committee recommended 43/ to the First Committee the adoption of a draft resolution contained in its report.

62. At its 97th meeting the First Committee adopted 44/ the draft resolution by 43 votes to 6, with 6 abstentions. 45/

63. The General Assembly considered the draft resolution adopted by the First Committee, at its 110th and 111th meetings.

b. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 196 (III)

64. In its report 46/ to the General Assembly the Interim Committee recommended the "Advisability of establishing a permanent committee of the General Assembly" and submitted a draft resolution to that effect.

65. At its 142nd plenary meeting on 24 September 1948 the General Assembly rejected 47/ by 46 votes to 6 the proposal that the item "Advisability of establishing a permanent committee of the General Assembly: report of the Interim Committee of the General Assembly", be deleted from the agenda of the General Assembly.

66. The Ad Hoc Political Committee considered this question at its 2nd to 5th meetings.

67. The draft resolution recommendation by the Interim Committee, to which various amendments were submitted, was adopted 48/ by the Ad Hoc Political Committee at its 5th meeting by 44 votes to 6, with 1 abstention.

68. The General Assembly considered the draft resolution adopted by the Ad Hoc Political Committee at its 168th and 169th plenary meetings.

c. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 295 (IV)

69. In its report 49/ to the General Assembly the Interim Committee recommended the re-establishment of the Committee.

40/ G A (II), 1st Com., 78th mtg., p. 179.

41/ G A (II), 1st Com., p. 611, annex 17 b (A/C.1/213/Corr.1).

42/ G A (II), 1st Com., 78th mtg., pp. 178 and 179.

43/ G A (II), 1st Com., pp. 620 and 621, annex 17 g (A/C.1/240).

44/ G A (II), 1st Com., 97th mtg., p. 335.

45/ After the vote had been taken the representatives of the USSR, Ukrainian SSR, Poland, Czechoslovakia, Byelorussian SSR and Yugoslavia declared that the establishment of an interim committee of the General Assembly was a violation of the Charter, which contained no provision for the setting up of such an organ, and that, because of the illegality of the proposed interim committee, their Governments would not participate in its work (G A (II), 1st Com., 97th mtg., p. 335).

46/ G A (III), Suppl. No. 10, A/606, annex III.

47/ G A (III/1), Plen., 142nd mtg., p. 106.

48/ G A (III/1), Ad Hoc Pol. Com., 5th mtg., p. 52.

49/ G A (IV), Suppl. No. 11 (A/966).

70. At its 224th plenary meeting on 22 September 1949 the General Assembly decided 50/ to include the item "Report of the Interim Committee: ... (b) Constitution, duration and terms of reference of the Interim Committee" in its agenda.

71. The Ad Hoc Political Committee considered the question at its 16th to 20th meetings, and at its 20th meeting on 19 October 1949 it adopted, 51/ by 41 votes to 6, with 6 abstentions, the draft resolution recommended by the Interim Committee.

72. The General Assembly considered the draft resolution adopted by the Ad Hoc Political Committee at its 250th plenary meeting.

d. SUMMARY OF RELEVANT CONSTITUTIONAL DISCUSSION IN THE PROCEEDINGS
CONNECTED WITH RESOLUTIONS 111 (II), 196 (III) AND 295 (IV)

73. During the discussion on the establishment and continuation of the Interim Committee, it was argued on the one side that under Article 11, paragraphs 2 and 3, it was clear that the Security Council bore the principal responsibility in the field of maintaining peace and security, because the Council alone had the means of executing the task. The General Assembly was empowered to discuss questions relating to the maintenance of international peace and security and to make recommendations with regard to such questions, but it could not take any action: that power was reserved for the Security Council and thus the Charter made a fundamental distinction between the competence of the Security Council and that of the General Assembly. It was clearly intended in the Charter that there should be no overlapping of the powers of the General Assembly and of the Security Council in matters relating to the maintenance of international peace and security. It was for the Security Council in the last resort to deal with the pacific settlement of disputes.

74. Further observations were made to the effect that the Interim Committee would automatically compete with the Security Council as was apparent from the provisions of the draft resolution which would give the Committee the right to consider situations falling under Articles 11 and 14 and to make recommendations with regard to them. It was true that Articles 11, 12, 13 and 14 vested the General Assembly with certain powers. The General Assembly, however, could not delegate such powers to any other organ. Therefore, the use of the Interim Committee as a substitute for the General Assembly and the Security Council would give rise to a state of affairs contrary to that contemplated by the Charter.

75. On the other side, the view was expressed that the Charter did not give the Security Council exclusive powers and control with regard to the maintenance of international peace and security. The jurisdiction of the General Assembly in this respect under Article 11 (2) was limited only by Article 12, that is to say, unless the Security Council was dealing with the matter, the General Assembly had complete jurisdiction. If the Security Council was given primary responsibility for the maintenance of international peace and security, under the Charter, the General Assembly as well had secondary responsibility in matters of this nature. The General Assembly had clear and direct responsibility in this sphere under Articles 10, 11, 13, 14 and 15, and consequently it was fully competent to assert its authority and to delegate it so long as it limited itself to the functions ascribed to it. Its authority was partly exclusive, partly parallel, partly residual and secondary.

50/ G A (IV), Plen., 224th mtg., paras. 46-48.

51/ G A (IV), Ad Hoc Pol. Com., 20th mtg., paras. 46 and 47.

76. The powers conferred upon the General Assembly in this respect were identical or sometimes equivalent with those of the Security Council. The competence of the General Assembly was subject to the primary responsibility of the Security Council in order "to ensure prompt and effective action". It was further limited by the provision of Article 11 (2), since the General Assembly had the power to debate and recommend, but when action was required, the responsibility was laid upon the Security Council and any such question had to be referred by the General Assembly to the Security Council. The proposal to establish the Interim Committee, which respected those limitations, did not encroach upon the primary responsibility of the Security Council for the maintenance of international peace and security. 52/

Decisions

At its 111th plenary meeting on 13 November 1947, the General Assembly adopted 53/ by 41 votes to 6, with 6 abstentions, resolution 111 (II): "Establishment of an Interim Committee of the General Assembly". 54/

At its 169th plenary meeting on 3 December 1948, the General Assembly adopted 55/ by 40 votes to 6, with 1 abstention, resolution 196 (III): "Re-establishment of the Interim Committee of the General Assembly". 56/

At its 250th plenary meeting on 21 November 1949, the General Assembly adopted, 57/ by 45 votes to 5, with 4 abstentions, resolution 295 (IV): "Re-establishment of the Interim Committee of the General Assembly". 58/

- 52/ For texts of relevant statements, see G A (II), 1st Com.,
 74th mtg.: Australia, pp. 137 and 138; United States, pp. 129-132;
 75th mtg.: Uruguay, pp. 139 and 140;
 76th mtg.: Byelorussian SSR, pp. 154 and 155; India, p. 150; Poland, p. 148;
 77th mtg.: Brazil, p. 160; USSR, p. 161;
 78th mtg.: Mexico, p. 166; United States, p. 172;
 94th mtg.: Australia, p. 308; USSR, pp. 309 and 310;
 95th mtg.: Australia, p. 316,
 96th mtg.: Norway, pp. 324 and 325; United Kingdom, pp. 327 and 328.
 G A (II), Plen., vol. II, 110th mtg., Australia, pp. 782 and 783;
 USSR, pp. 767-769.
 G A (III/1), Ad Hoc Pol. Com., 3rd mtg., Poland, p. 10.
 G A (III/1), Plen., 103th mtg., USSR, pp. 688 and 669.
 G A (IV), Ad Hoc Pol. Com., 17th mtg., Poland, paras. 17-31;
 18th mtg., USSR, paras. 50-56.
53/ G A (II), Plen., vol. II, 111th mtg., p. 822.
54/ For text see annex IV.
55/ G A (III/1), Plen., 169th mtg., p. 682.
56/ For text see annex IV.
57/ G A (IV), Plen., 250th mtg., para. 136.
58/ For text see annex IV.

2. Resolutions 377 (V), 503 (VI) and 703 (VII)

a. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 377 (V)

1. Seven-Power joint draft resolution

77. By a letter 59/ dated 20 September to the Secretary-General, the representative of the United States requested that the item "United action for peace" be included in the agenda of the fifth regular session of the General Assembly.

78. In an explanatory memorandum 60/ it was pointed out that the Charter "gives the General Assembly important functions to perform in the field of international peace and security, including the right to discuss any question relating to this field and the right to make recommendations". It was proposed: (a) to enhance the contribution by the General Assembly with respect to the avoidance of conflicts and to the restoration of peace if need arose; (b) to enable the General Assembly to meet on very short notice, in case of any breach of international peace and act of aggression, if the Security Council, "because of lack of unanimity of the permanent members, is unable to discharge its primary responsibility for the maintenance of international peace and security"; (c) that the General Assembly establish a commission of observers to observe in any area in which international tension could develop; (d) to recommend to the Member States that they designate within their national forces units which could be made available for prompt service on behalf of the United Nations; (e) to establish an ad hoc committee to study the means which the United Nations might employ through collective action to suppress breaches of the peace and repel acts of aggression.

79. It was further stated in the explanatory memorandum that the proposals "have the primary aim of preventing breaches of the peace and deterring acts of aggression and thereby minimizing the necessity of resorting to measures for the restoration of international peace and security. The purpose of the United States proposals is to give maximum effectiveness to United Nations efforts in keeping the peace."

80. At the 285th plenary meeting on 26 September 1950, the General Assembly decided 61/ to include this item in its agenda, and to refer it to the First Committee which considered it at its 354th and 371st meetings.

81. At the 354th meeting of the First Committee, Canada, France, Philippines, Turkey, the United Kingdom, the United States and Uruguay submitted a joint draft resolution 62/ and at the 363rd meeting they submitted a revised text of this draft resolution. 63/

82. In respect of this draft resolution the USSR, among others, submitted amendments, 64/ superseding its similar previous amendments 65/ to the original draft

59/ G A (V), Annexes, a.i. 68, p. 2, A/1373.

60/ G A (V), Annexes, a.i. 68, pp. 2 and 3, A/1377.

61/ G A (V), Plen., vol. I, 285th mtg., para. 67.

62/ G A (V), Annexes, a.i. 68, pp. 4-6, A/C.1/576.

63/ G A (V), Annexes, a.i. 68, pp. 6-8, A/C.1/576/Rev.1.

64/ G A (V), Annexes, a.i. 68, pp. 11 and 12, A/C.1/586 and A/C.1/586/Rev.1.

65/ G A (V), Annexes, a.i. 68, pp. 9 and 10, A/C.1/583.

resolution, in which it was proposed in section A, paragraph 1, of the joint revised draft resolution to delete the words:

"to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force, when necessary, to maintain or restore international peace and security",

and to replace them by the following:

"to making appropriate recommendations to maintain or restore international peace and security, it being understood that any such question on which action is necessary, shall, in accordance with Article 11 of the Charter, be referred to the Security Council by the General Assembly either before or after discussion."

83. At its 368th meeting the First Committee rejected 66/ the USSR amendment by 47 votes to 5, with 6 abstentions, and at its 369th meeting it adopted 67/ the joint draft resolution by 50 votes to 5, with 3 abstentions.

ii. USSR draft resolution

84. At the 358th meeting of the First Committee, the representative of the USSR submitted 68/ a draft resolution, 69/ which provided that:

"For the purpose of maintaining international peace and security, in accordance with the Charter of the United Nations, and, in particular, with Chapters V, VI and VII of the Charter,

"The General Assembly

"Recommends to the Security Council

"That it should take the necessary steps to ensure that the action provided for under the Charter is taken with respect to threats to the peace or acts of aggression and the peaceful settlement of disputes or situations likely to endanger the maintenance of international peace and security;"

85. With respect to this draft resolution, an amendment was submitted by France 70/ and an oral amendment by Uruguay. 71/ The latter was accepted by the representative of the USSR. 72/

86. At its 369th meeting the First Committee adopted, 73/ by 54 votes to none, with 5 abstentions, the first part of the USSR draft resolution as amended. At the same

66/ G A (V), 1st Com., vol. I, 368th mtg., para. 44.

67/ G A (V), 1st Com., vol. I, 369th mtg., para. 24.

68/ G A (V), Annexes, a.i. 68, p. 14, A/1456.

69/ For the full text of the USSR draft resolution, see G A (V), 1st Com., vol. I, 369th mtg., para. 33.

70/ G A (V), 1st Com., vol. I, 369th mtg., para. 34, A/C.1/591.

71/ G A (V), Annexes, a.i. 68, p. 17, A/1456.

72/ G A (V), 1st Com., vol. I, 369th mtg., para. 70.

73/ G A (V), 1st Com., vol. I, 369th mtg., para. 72.

meeting the USSR draft resolution as a whole, as amended, was approved 74/ by 49 votes to none, with 9 abstentions.

iii. Draft resolution submitted by Iraq and Syria

87. At the 363rd meeting of the First Committee, the representatives of Iraq and Syria submitted a joint draft resolution 75/ under the terms of which the General Assembly would recommend to the Governments of France, the United Kingdom, the United States and the USSR that they should meet during the fifth session of the General Assembly and discuss the outstanding problems threatening world peace and crippling the United Nations, with a view to resolving fundamental differences, and report the results to the General Assembly not later than 15 November 1950.

88. At the 370th meeting the representatives of Iraq and Syria submitted a revised text of their joint draft resolution, 76/ under the terms of which the General Assembly would recommend "to the permanent members of the Security Council that they meet and discuss individually or collectively and with other nations concerned, the outstanding problems which threaten world peace" and requested that they report to the General Assembly during the fifth session on any prospective progress.

89. At the 371st meeting the representatives of Iraq and Syria submitted a second revision of their joint draft resolution. 77/ At the same meeting, this revised draft resolution was approved unanimously. 78/

iv. Draft resolution recommended by the First Committee

90. The General Assembly, at its 299th to 302nd plenary meetings, considered the draft resolution 79/ adopted by the First Committee. At its 302nd plenary meeting the General Assembly rejected 80/ by 49 votes to 5, with 5 abstentions, a USSR amendment 81/ to section A, paragraph 1, of the operative part of the draft resolution; this was identical with the amendment submitted in the First Committee.

b. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 503 (VI)

91. The General Assembly, by resolution 377 (V) "Uniting for peace", had established a Collective Measures Committee and directed it to study and make a report to the Security Council and to the General Assembly at its sixth regular session on methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter, taking account of collective self-defence and regional arrangements.

92. In its report 82/ to the General Assembly, the Committee recommended, among its conclusions, that further study was needed in regard both to economic and financial and to military collective measures in order to carry out its task. 83/

74/ G A (V), 1st Com., vol. I, 369th mtg., para. 74.

75/ G A (V), Annexes, a.i. 68, p. 10, A/C.1/585.

76/ G A (V), Annexes, a.i. 68, p. 11, A/C.1/585/Rev.1.

77/ Same text as A/1456, resolution C: G A (V), Annexes, a.i. 68, pp. 20 and 21.

78/ G A (V), 1st Com., vol. I, 371st mtg., para. 40.

79/ G A (V), Annexes, a.i. 68, pp. 18-21, A/1456.

80/ G A (V), Plen., vol. I, 302nd mtg., para. 55.

81/ G A (V), Plen., vol. I, 302nd mtg., A/1465, paras. 49-66.

82/ G A (VI), Suppl. No. 13 (A/1891).

83/ G A (VI), Suppl. No. 13 (A/1891), p. 34.

93. At its 341st plenary meeting on 13 November 1951, the General Assembly decided 84/ to include in its agenda the item "Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter: report of the Collective Measures Committee".

94. The report was introduced in the First Committee by the Chairman of the Collective Measures Committee at the 462nd meeting on 3 December 1951, 85/ The First Committee considered the item at its 477th to 486th meetings.

95. At the 462nd meeting of the First Committee, the representatives of Australia, Belgium, Brazil, Canada, France, the Philippines, Turkey, the United Kingdom, the United States, Venezuela and Yugoslavia submitted a joint draft resolution 86/ and at the 481st meeting submitted a revised text of this draft resolution largely incorporating previously submitted amendments.

96. At the 478th meeting of the First Committee, the representative of the USSR submitted a draft resolution, 87/ to which various amendments were proposed.

97. At the 485th meeting, the representative of the USSR submitted 88/ the first paragraph of the operative part of its draft resolution which provided that the General Assembly decide "to abolish the Collective Measures Committee", as an amendment to the eleven-Power joint draft resolution. This amendment was rejected 89/ by 52 votes to 5, with 2 abstentions.

98. At the same meeting the First Committee adopted 90/ the eleven-Power joint draft resolution, as amended, by 51 votes to 5, with 3 abstentions.

99. At its 486th meeting the First Committee adopted 91/ the USSR draft resolution, as amended, by 50 votes to none, with 8 abstentions.

100. At its 359th plenary meeting on 12 January 1952, the General Assembly considered the draft resolution adopted by the First Committee.

C. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 703 (VII)

101. The Collective Measures Committee submitted its report, 92/ as directed by resolution 503 (VI), to the General Assembly at its seventh session.

102. At its 380th plenary meeting on 16 October 1952 the General Assembly decided 93/ to include the report of the Collective Measures Committee in its agenda.

103. The First Committee considered the item at its 573rd to 576th meetings. At the 573rd meeting of the First Committee, Australia, Belgium, Brazil, Canada, France, the

84/ G A (VI), Plen., 341st mtg., para. 8.

85/ G A (VI), 1st Com., 462nd mtg., paras. 3-15.

86/ G A (VI), Annexes, a.i. 18, pp. 1 and 2, A/C.1/676/Rev.1.

87/ G A (VI), Annexes, a.i. 18, p. 3, A/C.1/688.

88/ G A (VI), 1st Com., 485th mtg., para. 56.

89/ G A (VI), 1st Com., 485th mtg., para. 58.

90/ G A (VI), 1st Com., 485th mtg., para. 76.

91/ G A (VI), 1st Com., 486th mtg., para. 10.

92/ G A (VII), Suppl. No. 17 (A/2215).

93/ G A (VII), Plen., 380th mtg., para. 140.

Philippines, Turkey, the United Kingdom, the United States, Venezuela and Yugoslavia submitted a joint draft resolution ^{94/} which was adopted ^{95/} by the First Committee at its 576th meeting by 52 votes to 5, with 2 abstentions.

104. The General Assembly considered the draft resolution adopted by the First Committee at its 415th plenary meeting on 17 March 1953.

d. SUMMARY OF RELEVANT CONSTITUTIONAL DISCUSSION IN THE PROCEEDINGS
CONNECTED WITH RESOLUTIONS 377 (V), 503 (VI) AND 703 (VII)

105. During the discussion in the items "United action for peace" and "Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter", it was argued, on the one hand, that the intention of those representatives who submitted or supported draft resolutions on the items, was to replace the Security Council by the General Assembly by giving the latter powers to which it was not entitled and which under the Charter belonged exclusively to the Security Council. The proposed measures would eliminate certain functions entrusted under the Charter to the Council and would deprive the Council of its basic responsibilities and rights. On the other hand, these basic responsibilities and rights would be transferred to the General Assembly which would be given some new functions. Thus, the centre of gravity in the field of the maintenance of international peace and security would be shifted from the Security Council to the General Assembly.

106. The General Assembly was not empowered to assume the task of maintaining international peace and security whenever the Council, because of lack of unanimity of its permanent members, failed to exercise its primary responsibility. To replace the Security Council by the General Assembly was to ignore a fundamental principle of the Charter, that is to say, the rule of unanimity of the great Powers, and to undermine their joint, common and mutual responsibility for the maintenance of peace.

107. On the other hand, it was held that the fact that Article 24 spoke of the "primary" responsibility of the Security Council for the maintenance of international peace and security indicated that the Council had the main but not exclusive responsibility.

108. The "primary" responsibility implied a "secondary" responsibility, the latter being conferred upon the General Assembly by Articles 10, 11, 12 and 14. The Assembly would exercise this "secondary" responsibility in the event that the Security Council failed to exercise its "primary" responsibility. This secondary responsibility of the Member States was overriding: it was not a question of the General Assembly assuming its rights but, rather, its duties.

109. It was further argued that in fact, at San Francisco, the small Powers had only agreed to the rule of unanimity of the permanent members: on the condition that the General Assembly was granted the power to intervene and to make recommendations within

^{94/} Same text as G A resolution 703 (VII).

^{95/} G A (VII), 1st Com., 576th mtg., para. 32.

the framework of Chapters VI and VII in cases where the Security Council was unable to discharge its primary responsibility. 96/

Decisions

At its 302nd plenary meeting on 3 November 1950, the General Assembly adopted, 97/ by 52 votes to 5, with 2 abstentions, resolution 377 (V): "Uniting for peace". 98/

At its 359th plenary meeting on 12 January 1952, the General Assembly adopted, 99/ by 51 votes to 5, with 3 abstentions, resolution A, and by 57 votes to none, with 2 abstentions, resolution B, of resolution 503 (VI): "Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter". 100/

At its 415th plenary meeting on 17 March 1953, the General Assembly adopted, 101/ by 50 votes to 5, with 3 abstentions, resolution 703 (VII): "Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter: report of the Collective Measures Committee". 102/

96/ For texts of relevant statements, see:

- G A (V), 1st Com., vol. I,
- 354th mtg.: United States, paras. 8 and 9.
- 355th mtg.: France, paras. 17-19; Turkey, paras. 4-6.
- 357th mtg.: Cuba, paras. 4-6; France, para. 49; USSR, paras. 30-41.
- 358th mtg.: Canada, paras. 38-53; Ecuador, paras. 2-10, Philippines, paras. 67-69.
- 359th mtg.: Czechoslovakia, paras. 38-46; Norway, paras. 23-25.
- 360th mtg.: Byelorussian SSR, para. 53; Ukrainian SSR, paras. 15-19; United Kingdom, paras. 3 and 4.
- 361st mtg.: Argentina, paras. 42 and 43.
- 363rd mtg.: Poland, paras. 32-37.
- 364th mtg.: Australia, paras. 63 and 64; Cuba, paras. 37 and 38; Czechoslovakia, paras. 25-27; France, paras. 23 and 24; United Kingdom, paras. 5-18.

- G A (V), Plen., vol. I,
- 279th mtg.: United States, para. 43.
- 299th mtg.: Poland, para. 180.
- 300th mtg.: Byelorussian SSR, paras. 102-104, 120 and 121.
- 301st mtg.: Argentina, paras. 149-151; Cuba, para. 7-31.
- G A (VI), 1st Com.,
- 479th mtg.: Czechoslovakia, paras. 23 and 24.
- 480th mtg.: Philippines, para. 48; Syria, paras. 60-62.
- 481st mtg.: Ukrainian SSR, paras. 7-9.
- 483rd mtg.: USSR, paras. 26-32; United Kingdom, paras. 17-20; United States, paras. 51-54.

- 485th mtg.: Poland, para. 19.
- G A (VII), 1st Com.,
- 574th mtg.: Canada, para. 32.

97/ G A (V), Plen., vol. I, 302nd mtg., para. 73.

98/ For text see annex IV.

99/ G A (VI), Plen., 359th mtg., paras. 142 and 143.

100/ For text see annex IV.

101/ G A (VII), Plen., 415th mtg., para. 17.

102/ For text see annex IV.

B. The question of the meaning and scope of the term "action" as used in Article 11 (2)

110. This question is directly connected with the provision of Article 11 (2) whereby "Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion."

111. The meaning and scope of the term "action" as used in this provision has been considered, to a greater or lesser extent, in connexion with all the items referred to under II, A and C in the present study. Statements were made in the proceedings to the effect that the term "action" means or implies the following types of action:

Military and economic sanctions; 103/

Enforcement action; 104/

Action which the Security Council could take under the Chapter or Chapters which define its functions; 105/

Coercive action; 106/

Enforcement measures; 107/

Action of "any kind", 108/

Enforcement measures under Chapter VII and also recommendations under Articles 36 and 37 as well as a fortiori investigation and inquiry of any kind; 109/

A finding or determination as to an act of aggression; 110/

Action which could be taken by the Security Council under Chapters V - VIII. 111/

112. Much of the material included under the other two questions treated in this study is also relevant in some respects for the illustration of the present question which is closely related to both of them. In particular, annex II may be examined with a view to ascertaining the range and types of measures which, having been adopted

103/ G A (II), 1st Com., 78th mtg., p. 172.

104/ G A (V), 1st Com., vol. I, 365th mtg., para. 13.

G A (V), Plen., vol. I, 300th mtg., paras. 120-130.

G A (VI), 1st Com., 479th mtg., paras. 22-26.

105/ G A (V), 1st Com., vol. I, 350th mtg., paras. 45-49.

106/ G A (V), 1st Com., vol. I, 364th mtg., paras. 8 and 49-51.

107/ G A (V), Plen., vol. I, 301st mtg., paras. 179 and 180.

108/ G A (V), 1st Com., vol. I, 364th mtg., para. 27.

109/ G A (II), 1st Com., 76th mtg., p. 148, and pp. 154 and 155; 94th mtg., pp. 309 and 310.

G A (III/1), Plen., 168th mtg., pp. 668 and 669.

G A (IV), Ad Hoc Pol. Com., 17th mtg., paras. 17-31; 18th mtg., paras. 50-56.

G A (V), Plen., vol. II, 330th mtg., paras. 37-42, 51, 55, 65, 69-72, 83, 89 and 90, 101-107, 122-124, 127-131.

G A (V), Plen., vol. II, 327th mtg., para. 75.

111/ G A (VII), 1st Com., 539th mtg., para. 49.

by the General Assembly, would appear to have been deemed by the Assembly as not contravening the requirement of the proviso of Article 11. It will be, therefore, sufficient to summarize hereunder some additional extracts from the constitutional discussion in the proceedings on the item "United action for peace", which are of particular relevance to the questions.

Resolution 377 (V)

a. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 377 (V) 112/

b. SUMMARY OF RELEVANT CONSTITUTIONAL DISCUSSION IN THE PROCEEDINGS CONNECTED WITH RESOLUTION 377 (V)

113. During the consideration of the item "United action for peace" some representatives argued that while the concept of "action" in the sense of the Charter meant discussion of a question by the General Assembly, as well as the making of a recommendation by that organ, the concept of "action" as used in Article 11 (2), meant coercive action necessary for the maintenance of international peace and security, which was the specific function of the Security Council. That was the only sphere in which the General Assembly could not make a recommendation but must refer the matter to the Security Council. Therefore, the General Assembly could make recommendations on any subject within the framework of the Charter, but those recommendations must not imply "action" within the meaning of Article 11 (2), since only the Security Council was competent with regard to coercive action. The General Assembly, therefore, had no right to make suggestions or recommendations of that type. In this respect Article 11 (2) constituted a limitation of the general powers of the General Assembly as defined in Article 10. The General Assembly had the right to consider questions relating to the maintenance of peace and security, and not just questions which do not relate to peace and security. But, when the measures envisaged called for action in the sense of enforcement action, particularly by means of armed forces, the General Assembly could do nothing, since the Charter did not give it the right to act.

114. It followed, therefore, that if action were necessary, the question must be referred to the Security Council. If the General Assembly wanted to make a recommendation on such a question, it was not competent to do so since, if a recommendation were to involve action, the Assembly would not have the right to take such action, and consequently could not recommend what was to be done. Only the Security Council could take action on questions falling within the scope of Articles 10 and 11. The assertion that the General Assembly could recommend action to be taken under the Charter to forestall aggression stood in flagrant contradiction of Article 11 (2), which vested this prerogative in the Security Council. This right to take action rested with the Security Council. The General Assembly could recommend everything except that which Article 11 stated it could not.

115. Other representatives stated that, if the General Assembly possessed all residuary powers with regard to the maintenance of international peace and security, this could be construed as implying that it had all the powers of the Security Council if the latter failed to act even if those powers were not specifically set out in the Charter. In this connexion, however, difficulties were raised by the last sentence of Article 11 (2) which, it was pointed out, was susceptible of two different interpretations. If this provision were designed to ensure that before the General Assembly exercised its residuary powers it should refer the matter to the Security Council for action, then the provision would not bar the General Assembly from

112/ See paras. 77-90.

exercising its residuary powers if the Security Council failed to act effectively. On the other hand, it was possible that the provision was designed to ensure that the General Assembly, if it considered that action was necessary, would refer the matter to the Security Council, because the Council was the only organ vested with the power to take action.

116. Other representatives again contended that if it were assumed that an international dispute or a breach of the peace existed, it would be appropriate to take "action" in the widest sense of the meaning of the term. Thus, under the provision of the last sentence of Article 11 (2) such a question should be submitted by the General Assembly to the Security Council for its consideration and, if necessary, for the exercise of the powers conferred upon it by Chapters V, VI and VII. In the event that the Security Council did not make use of its powers, then it was in order for the General Assembly once again to exercise its competence in the question, since Article 11 would not preclude the General Assembly from exercising the powers conferred upon it by Article 10 in respect to such a question. Obviously, a recommendation by the General Assembly did not have the force of a decision of the Security Council taken under the terms of Chapter VII. Therefore, the General Assembly would not have the power to make decisions which would automatically impose commitments or enforcement obligations on the Members of the United Nations.

117. It was further argued that Articles 10, 11 and 14 empowered the General Assembly to recommend whatever measures were necessary in connexion with any matter within the scope of the Charter, including questions connected with the maintenance of international peace and security. The limitations in Article 11 (2) did not in any way preclude the General Assembly from exercising the powers to make recommendations conferred upon it by Article 10 since Article 11 (4) envisaged that the General Assembly's power of recommendation was not limited by the provisions of Article 11. If the provision of the last sentence of Article 11 (2) was to be reconciled with Article 10, the term "action" was to be defined as not including recommendations that the General Assembly had the power to make under Article 10. This was a reason for making the distinction that, although the General Assembly was not empowered to order or to take direct enforcement action, it could recommend action of a certain character including the use of armed force. For this reason, it would be justifiable to adopt the attitude that when the Security Council was unable to take action, the General Assembly had the responsibility to act under Article 10. 113/

113/ For texts of relevant statements, see G A (V), 1st Com., vol. I,
354th mtg.: United States, paras. 8 and 9.
357th mtg.: France, para. 49; USSR, paras. 30-41.
358th mtg.: Canada, paras. 38-53. Ecuador, paras. 2-10.
359th mtg.: Pakistan, paras. 5-7.
360th mtg.: Byelorussian SSR, para. 56.
361st mtg.: Colombia, paras. 72 and 73.
362nd mtg.: USSR, paras. 36-71.
363rd mtg.: Pakistan, paras. 43-50; Poland, paras. 31-38;
Uruguay, paras. 18 and 19.
364th mtg.: Cuba, paras. 37 and 38; Czechoslovakia, paras. 25-27;
France, paras. 23 and 24; United Kingdom, paras. 5-18.
365th mtg.: Iraq, paras. 1 and 2.

Decision

At its 302nd plenary meeting on 3 November 1950, the General Assembly adopted 114/ by 52 votes to 5, with 2 abstentions, resolution 377 (V): "Uniting for peace". 115/

**C. The question of the extent of the competence and powers
of the General Assembly with regard to questions
"on which action is necessary"**

118. Article 11 (2) empowers the General Assembly to discuss any questions relating to the maintenance of international peace and security brought before the Assembly as provided in the Article, and to make recommendations with regard to any such questions.

119. The Article contains no limitation as to the powers of discussion 116/ of the Assembly. As to the powers of recommendation, they are subject to the limitation stated in Article 12. Article 11 further provides that "Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion".

120. The question of the effect of this provision on the competence and powers of the General Assembly to make recommendations is one which has often arisen in the proceedings of the Assembly. As stated in the Introductory Note, this question and the other two inter-related questions treated in this study are only facets of the broad question of the relationship between the General Assembly and the Security Council from the standpoint of their respective Charter functions and powers for the maintenance of international peace and security. Although the most varied views have been stated in the proceedings of the General Assembly, constitutional discussion bearing on this question has centred mainly on (a) whether a particular question under consideration fell under the last provision of Article 11 (2) and, therefore, required referral to the Security Council, and (b) whether the measures recommended in particular proposals submitted to the Assembly were of such a nature as to involve an encroachment upon the competence of the Security Council and an extension beyond the provisions of the Charter of the powers of the General Assembly.

121. The question has been discussed especially in connexion with the following items: "Relations between Spain and the United Nations"; 117/ "United action for peace"; 118/ "Intervention of the Central People's Government of the People's Republic of China in Korea"; 119/ "Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter: report of the Collective Measures Committee". 120/

114/ G A (V), Plen., vol. I, 302nd mtg., para. 73.

115/ For text, see annex IV.

116/ The powers of discussion of the General Assembly under Article 11 have never been challenged on the basis of the provisions of the Article, although objections to the competence of the Assembly have been raised on occasions, mainly on the basis of Article 2 (7), and Article 107.

117/ G A (I/2), item 58. The question of domestic jurisdiction was also a major issue in the proceedings on this item. See also in this Repertory under Article 2 (7).

118/ G A (V), item 68.

119/ G A (V), item 76.

120/ G A (VI), item 18.

1. Resolution 39 (I)

a. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 39 (I)

122. By a letter 121/ to the Chairman of the General Committee, the delegations of Belgium, Czechoslovakia, Denmark, Norway and Venezuela proposed that the item concerning "the relations between Spain and the United Nations" be put on the agenda of the second part of the first session of the General Assembly.

123. At its 46th plenary meeting on 31 October 1946, the General Assembly decided to include the item in its agenda. 122/ The First Committee considered this question at its 35th, 38th, 39th and 43rd meetings. The following draft resolutions and amendments were submitted:

(a) The representative of Poland submitted a draft resolution 123/ recommending "that each Member of the United Nations terminate, forthwith, diplomatic relations with the Franco regime."

(b) The representative of the Byelorussian SSR submitted the following amendment 124/ to the Polish draft resolution:

"The General Assembly recommends that each Member of the United Nations terminate diplomatic and economic relations with Franco Spain, such action to include the suspension of communications by rail, sea, air, post and telegraph."

(c) The representative of the United States submitted a draft resolution 125/ which recommended that the Franco Government of Spain be debarred from membership in international agencies set up at the initiative of the United Nations, and from participation in conferences or other activities which might be arranged by the United Nations or by these agencies, until a new and acceptable Government was formed in Spain. The draft resolution further provided that the General Assembly place on record its conviction that General Franco should surrender the powers of government to a provisional Government broadly representative of the Spanish people, committed to respect freedom of speech, religion and assembly and to the prompt holding of an election in which the Spanish people might express their will.

(d) To this draft resolution, the representative of Belgium submitted an amendment 126/ proposing to add the following paragraph:

"Recommends that if, within a reasonable time, the political conditions enumerated above are not realized, the Security Council consider the adequate measures to be taken in order to remedy the situation, and

"Recommends that all Members of the United Nations immediately recall from Madrid, by way of warning, their ambassadors and ministers plenipotentiary, accredited there."

121/ G A (I/2), 1st Com., pp. 351 and 352, annex 11 (A/BUR/45).

122/ G A (I/2), Plen., 46th mtg., pp. 924 and 925.

123/ G A (I/2), 1st Com., pp. 352 and 353, annex 11 a (A/C.1/24).

124/ G A (I/2), 1st Com., p. 354, annex 11 c (A/C.1/35 and Corr.1).

125/ G A (I/2), 1st Com., pp. 354-355, annex 11 d (A/C.1/100).

126/ G A (I/2), 1st Com., pp. 357-358, annex 11 h (A/C.1/107).

124. The representatives of Mexico, Venezuela, Guatemala, Panama and Chile submitted an amendment 127/ proposing to replace the penultimate paragraph of the United States draft resolution by the following:

"And inasmuch as the United Nations, by the action they took in San Francisco, in Potsdam, in London, and more recently in Lake Success, have in fact, collectively refused to maintain relations with the Franco régime, does hereby recommend that the Members of the United Nations take, individually, the same attitude they have taken collectively and refuse to maintain diplomatic relations with the present Spanish régime."

125. At its 39th meeting on 4 December 1946, the First Committee adopted a proposal based on that originally submitted by Cuba 128/ for the establishment of a sub-committee (Sub-Committee 4) which would seek to find common ground among the draft resolutions and amendments and to produce a new draft resolution.

126. At its 43rd meeting on 9 December, the First Committee considered the report 129/ of Sub-Committee 4. In the report it was stated that during the fourth meeting the representative of the Byelorussian SSR had conditionally withdrawn his amendment providing for the breaking of economic relations by the Members of the United Nations with Franco Spain. 130/

127. At the same meeting, the Sub-Committee's draft resolution, as amended, was adopted 131/ by 23 votes to 4, with 20 abstentions.

128. The General Assembly considered the draft resolution adopted by the First Committee at its 57th to 59th plenary meetings. 132/

127/ G A (I/2), 1st Com., p. 358, annex 11 i (A/C.1/108).

128/ G A (I/2), 1st Com., p. 357, annex 11 g (A/C.1/106).

129/ G A (I/2), 1st Com., pp. 358-362, annex 11 k (A/C.1/128).

130/ G A (I/2), 1st Com., p. 360, annex 11 k (A/C.1/128).

131/ G A (I/2), 1st Com., 43rd mtg., p. 304.

132/ During the consideration of the item "Relations between Spain and the United Nations" at the second session of the General Assembly a draft resolution (G A (II), 1st Com., p. 626), annex 20 a (A/C.1/259) was submitted by the representative of Poland recommending that the Security Council take adequate measures in conformity with Article 41 in order to remedy the situation according to resolution 39 (I). The discussion in the General Assembly was centred on the question whether Article 41 could be invoked. At its 107th meeting the First Committee approved by 29 votes to 6, with 20 abstentions (G A (II), 1st Com., 107th mtg., p. 431) a draft resolution (G A (II), 1st Com., p. 628), annex 20 g (A/C.1/264) submitted by a drafting sub-committee, providing for reaffirmation of resolution 39 (I) and expressing confidence that the Security Council would exercise its responsibilities as soon as it considered that the situation in regard to Spain so required. At the 118th plenary meeting of the General Assembly on 17 November 1947 the second paragraph of the draft resolution, providing for the reaffirmation of resolution 39 (I), was rejected, having failed to obtain the requisite majority of two-thirds (G A (II), Plen., vol. II, 118th mtg., pp. 1095 and 1096) and the General Assembly adopted, by 36 votes to 5, with 12 abstentions (*ibid.*, p. 1096) the remainder of the draft resolution expressing confidence with regard to the exercise by the Security Council of its responsibilities concerning the situation in Spain.

b. SUMMARY OF RELEVANT CONSTITUTIONAL DISCUSSION IN THE PROCEEDINGS
CONNECTED WITH RESOLUTION 39 (I)

129. During the consideration of the item "Relations between Spain and the United Nations," the question arose whether the General Assembly was competent to deal with the matter and to make recommendations with regard to it.

130. Several representatives expressed the view that to recommend the severance of diplomatic relations with Spain or the recall of diplomatic representatives from Spain, when the Security Council had refrained from a declaration that the Franco régime constituted a threat to the peace, would constitute a measure of intervention in the internal affairs of Spain.

131. In this connexion, it was argued that because the Security Council had not found that the situation in Spain was a definite menace to international peace but represented only a potential danger in this regard, any intervention on the part of the United Nations, justified only in the case of aggression, would be a violation of the Charter. The United Nations could take coercive measures only when the Security Council had determined the existence of a threat to the peace, a breach of the peace or an act of aggression under Article 39. Since the investigation by the Security Council had proved that the situation in Spain was not at present a menace to peace, it was not possible to take measures under Articles 41 and 42 and the situation in Spain had to be considered internal. Furthermore, the exercise of enforcement measures by the General Assembly was outside the competence of that organ, since only the Security Council had power to act under Chapter VII. Therefore, only the Security Council should be competent to adopt the recommended measures, that is to say, the withdrawal of diplomatic representatives, and then only in the specific instances mentioned in Article 41 of the Charter.

132. With regard to that paragraph of the draft resolution providing that the General Assembly:

"Recommends that if, within a reasonable time, there is not established a government which derives its authority from the consent of the governed, committed to respect freedom of speech, religion and assembly and to the prompt holding of an election in which the Spanish people, free from force and intimidation and regardless of party, may express their will, the Security Council consider the adequate measures to be taken in order to remedy the situation;"

the following observation was made. In such cases it was not for the General Assembly but for the Security Council itself to decide whether to take action. The above-mentioned paragraph implied that the existence of a Government in Spain which did not completely fulfill the conditions laid down in this paragraph was in itself ground for action by the Security Council to remedy the situation. This was contrary to the Charter which limited action by the Security Council to cases in which it had determined that there existed a danger to the maintenance of international peace and security. Also, grave doubts were expressed as to whether the Charter authorized the Security Council to take measures in circumstances defined in the above-quoted provision of the draft resolution.

133. Other representatives, on the other hand, were of the opinion that the indefinite continuation of the Franco régime, a fascist dictatorship, established by fascist intervention which had contributed to fascist aggression, had been a potential and latent menace to international peace and security. Its existence had increasingly caused disturbances in international relations and was creating a danger of war. Thus, the régime was defying the principles of the Charter and represented a symbol of

resistance to the United Nations. For these reasons the matter could not be considered as an internal matter but was a matter of international concern.

134. The General Assembly could not, therefore, evade its responsibility under the Charter but must assume a firm attitude and take definite action to end this situation. There had been no objections to the Declarations of London and Potsdam, or to the Tri-Partite Declaration of 4 March 1946, and no arguments had been raised then that the Franco régime was a matter of domestic concern. Nor had the question of intervention been mentioned when this régime had been unanimously denounced at San Francisco. Unilateral action was not sufficient: collective action, which was within the province of the powers of the General Assembly, had to be taken; the question should not be whether action should be taken, but what action the General Assembly was going to take.

135. To evoke the principle of non-intervention in order to paralyse a collective action by the General Assembly was a manifest contradiction, since this principle referred to unilateral intervention only or to interventions by a group of States acting arbitrarily or on their own initiative. The General Assembly could take action to defend the principles of law and for this reason it could take a collective action which would not be an intervention.

136. The United Nations, by barring Franco Spain from membership in the organization, had formally declared that it would not maintain any relations with the Franco régime. Therefore, it was not consistent to hesitate over an action likely to produce the desired change in régime.

137. The breaking of relations with Franco Spain was a passive measure and did not constitute intervention. The word "intervention" should not be used in the present case: the dogma of non-intervention had nothing in common with the system of collective action provided for in the Charter. Further, a resolution of the General Assembly was only a request to individual Governments which still remained free to decide their own course of action. The severance of diplomatic relations could not, therefore, be considered as intervention on the ground that it took place at the request of the General Assembly. Still less could the withdrawal of the heads of diplomatic missions accredited to a State be considered an intervention: Such a withdrawal constituted preventive measures for the sake of peace and security which fell within the competence of the General Assembly and did not imply intervention. They were not "sanctions" within the technical meaning of the Charter, but a political attitude. Situations which were an actual or potential danger to the peace of the world and constituted a continuous violation of the most elementary human rights were essentially within international jurisdiction, that is to say, essentially within the competence of the United Nations. The General Assembly should assist the fostering of

those rights in order that they might be made effective in Spain and to this end should formulate explicit recommendations. 133/

Decision

At its 59th plenary meeting on 12 December 1946, the General Assembly adopted 134/ by 34 votes to 6, with 3 abstentions, resolution 39 (I): "Relations of Members of the United Nations with Spain". 135/

2. Resolution 377 (V)

a. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 377 (V) 136/

b. SUMMARY OF RELEVANT CONSTITUTIONAL DISCUSSION IN THE PROCEEDINGS CONNECTED WITH RESOLUTION 377 (V)

138. During the consideration of the item "United action for peace" it was argued, on the one side, that the General Assembly was authorized to consider all questions relating to the maintenance of international peace and security, with the exception of two instances: (a) when a question was being considered by the Security Council, the General Assembly had the right to discuss the question but not to make recommendations; (b) similarly, when the measures envisaged called for action, in the sense of enforcement action, particularly the employment of armed forces, the General Assembly under Article 11 (2) had no power to act, since the Charter did not give it the right to act.

135/ For texts of relevant statements, see G A (I/2), 1st Com.,

35th mtg.: Costa Rica, p. 232; El Salvador, p. 231; Guatemala, pp. 232 and 233; Nicaragua, p. 234; Philippines, p. 234; Poland, pp. 226-228;

36th mtg.: Uruguay, pp. 233 and 234; Venezuela, p. 229; Byelorussian SSR, p. 243; Czechoslovakia, p. 236; Norway, pp. 237 and 238; Panama, pp. 240 and 241; Paraguay, p. 235; Peru, p. 242; United States, p. 239;

37th mtg.: Belgium, p. 246; Chile, pp. 252 and 253; Costa Rica, p. 252; Cuba, p. 245; Ecuador, p. 251; El Salvador, p. 253; France, pp. 248 and 249; Mexico, p. 254; United Kingdom, pp. 247 and 248; Yugoslavia, p. 251;

38th mtg.: Guatemala, p. 263; Nicaragua, p. 262;

39th mtg.: China, pp. 265-270; Denmark, p. 264; Ethiopia, p. 265; Guatemala, p. 268; USSR, p. 267;

43rd mtg.: Colombia, p. 295; El Salvador, p. 303; Peru, p. 303.

G A (I/2), Plen.,

57th mtg.: Chile, p. 1168; Colombia, p. 1171; Poland, p. 1168;

58th mtg.: Costa Rica, pp. 1182 and 1184; Ecuador, p. 1197; El Salvador, pp. 1188 and 1190; France, pp. 1193 and 1195; Venezuela, pp. 1180;

59th mtg.: Argentina, pp. 1206 and 1208; Guatemala, p. 1204; Mexico, p. 1215; Nicaragua, p. 1202; Panama, p. 1220; Paraguay, p. 1204; Philippines, p. 1209; USSR, pp. 1212 and 1213; United Kingdom, p. 1199; United States, p. 1217; Uruguay, pp. 1210 and 1211.

134/ G A (I/2), Plen., 59th mtg., p. 1222.

135/ For text, see annex IV.

136/ See paras. 77-90 above.

139. The seven-Power joint draft resolution 137/ provided that the General Assembly could make recommendations in cases where there appeared to be a threat to the peace, breach of the peace or act of aggression. Such questions, however, were of a substantive nature and came under the exclusive jurisdiction of the Security Council. The argument that the General Assembly could forestall aggression by recommending the use of armed forces implied a flagrant violation of Article 11 (2). The Charter did not empower the General Assembly to recommend troop movements and the employment of armed forces, nor did it authorize the General Assembly to control armed forces; under the joint draft resolution the General Assembly would be empowered to assume command of armed forces and be responsible for their maintenance and allocation. Paragraphs 7 and 8 of the seven-Power draft resolution, which provided for an action of the type of enforcement measures defined in Chapter VII, were not in accordance with the Charter. The contradiction between Article 43 and the provision of the draft resolution inviting each Member State to survey its resources in order to determine the nature and the scope of the assistance it might be in a position to render in support of any recommendations of the Security Council or of the General Assembly for the restoration of international peace and security could not be denied by asserting that the armed forces to be used to carry out enforcement measures would not be placed at the disposal of the General Assembly. If these two paragraphs were adopted, the principle laid down in Article 43 that the armed forces of the United Nations should be placed at the exclusive disposal of the Security Council would be violated and its requirements regarding special agreements would not be met. Paragraph 10 of the draft resolution, providing for the setting up of a panel of military experts, violated Article 47 according to which the Military Staff Committee, under the authority of the Security Council, was responsible for the employment of armed forces placed at the disposal of the Security Council. The effect of paragraph 10 would be the establishment of duplicate organs since under Article 47 the Military Staff Committee already possessed the powers which it was proposed to vest in the panel of military experts.

140. It had been asked whether the severance of diplomatic relations proposed to the Assembly in the case of Franco Spain was not, in fact, an enforcement action; the answer was in the affirmative; it was. However, while the last sentence of Article 11 referred to enforcement action with regard to the possibility of the use of armed forces, the severance of diplomatic relations or interruption of economic relations were enforcement measures which did not include the use of armed force. The proposals requesting the General Assembly not to evade the consideration of the question of Franco Spain and to recommend the severance of diplomatic relations were in accordance with Article 41, because under Article 11 the General Assembly had the right to consider the matter if the action did not involve the use of armed forces.

141. It was contended, on the other side, that the joint draft resolution did not confer upon the General Assembly any powers which it did not already possess under the Charter. The General Assembly was under no obligation to transmit every question to the Security Council regardless of what kind of action was required. Article 11 (2) referred only to action necessary under the Charter. Many Articles authorized action on the part of the General Assembly in the field of the maintenance of international peace and security. Thus Articles 55, 56, 59 and 60 referred to joint action under the authority of the General Assembly, with a view to assuring friendly and peaceful relations in the field of economic and social co-operation, a question directly related to the maintenance of international peace and security. Articles 73, 76, 85 and 87 also referred to action by the General Assembly for the maintenance of international

137/ G A (V), Annexes, a.i. 68, pp. 4-6, A/C.1/576.

peace and security in the case of Non-Self-Governing and Trust Territories. Article 35 provided that the General Assembly might be seized with a dispute, and Article 51 dealt with self-defence, individual or collective, until the Security Council had taken the measures necessary to maintain peace. Therefore, if the Security Council was prevented from exercising its functions and powers with regard to the maintenance of international peace and security, the General Assembly could take measures of collective self-defence.

142. If the Security Council, because of lack of unanimity among its permanent members, should be unable to act on a question concerning a breach of the peace or an act of aggression, other courses of action were open: self-defence, collective defence and certain other measures. Under the joint draft resolution in question the General Assembly, therefore, would not apply measures under Chapters VI and VII, but would be in a position to recommend positive action, including the use of armed forces. Paragraph 7 of the seven-Power draft resolution was based on the powers conferred upon the General Assembly under Article 11. It provided for a type of action, that is to say, a survey of the resources to be placed at the disposal of the United Nations, which did not come within the limitations provided for in Article 11 (2). Paragraphs 8, 9 and 10 of the draft resolution set forth the consequences of the survey provided for in paragraph 7. If the Security Council had implemented Article 43 of the Charter there would have been no need to authorize the General Assembly to recommend this action. The draft resolution did not divest the Security Council of its powers but provided that while the five permanent members of the Security Council were not able to achieve unanimity on special agreements provided for in Article 43, the Member States could delay no longer in discharging their obligation to maintain within their national armed forces contingents to be held available for the United Nations. The above provision, therefore, might constitute a step towards implementing Article 43.

143. Actions taken in the past by the General Assembly constituted precedents confirming the power of the General Assembly to take action for the maintenance of international peace and security without prior or subsequent reference of the matter to the Security Council.

144. It was also stated by other representatives that the question arose whether the provisions of the joint draft resolution empowering the General Assembly to set up national armed forces and giving it competence to recommend enforcement action were in accordance with the Charter. Regarding the first provision, establishment of military forces to be used in time of crisis, there was no conflict with the Charter. Regarding the second, the competence of the General Assembly to recommend the use of armed forces for enforcement action, there were some doubts. However, the General Assembly had had the tendency to extend its competence beyond the limits indicated in the Articles of the Charter. For instance, the General Assembly in resolution 39 (I) had recommended a type of diplomatic boycott of Franco Spain, which action was tantamount to an

enforcement measure. In resolution 193 (III) 138/ it had recommended that Member States should not permit the export of raw materials to the States neighbours of Greece.

138/ The parts of resolution 193 A (III) which are relevant to the question examined here read as follows:

"A

"The General Assembly,

"1. Having considered the reports of the Special Committee established by General Assembly resolution 109 (II),

"2. Having noted the conclusions of the Special Committee and, in particular, its unanimous conclusion that, despite the aforesaid resolution of the General Assembly, 'the Greek guerrillas have continued to receive aid and assistance on a large scale from Albania, Bulgaria and Yugoslavia, with the knowledge of the Governments of those countries', and that the Greek guerrillas in the frontier zones have, as found by the Special Committee:

"(1) 'Been largely dependent on external supply. Great quantities of arms, ammunition and other military stores have come across the border, notably during times of heavy fighting. Strongly held positions of the guerrillas have protected their vital supply lines from Bulgaria, Yugoslavia and, in particular, from Albania. In recent months, there has been less evidence of receipt of supplies from Yugoslavia by the guerrillas; ...'

".....

"3. Having noted further the conclusions of the Special Committee that a continuation of this situation 'constitutes a threat to the political independence and territorial integrity of Greece and to peace in the Balkans' and 'that the conduct of Albania, Bulgaria and Yugoslavia had been inconsistent with the purposes and principles of the Charter of the United Nations',

"4. Having noted the recommendations submitted by the Special Committee,

"5. Considers that the continued aid given by Albania, Bulgaria and Yugoslavia to the Greek guerrillas endangers peace in the Balkans, and is inconsistent with the purposes and principles of the Charter of the United Nations;

"6. Calls upon Albania, Bulgaria and Yugoslavia to cease forthwith rendering any assistance or support in any form to the guerrillas in fighting against the Greek Government, including the use of their territories as a base for the preparation or launching of armed action;

".....

"9. Recommends to all Members of the United Nations and to all other States that their Governments refrain from any action designed to assist directly or through any other Government any armed group fighting against the Greek Government;"

This resolution is not treated in the Analytical Summary of Practice in view of the fact that there was no constitutional discussion relevant to this issue in the proceedings leading up to its adoption.

This recommendation also called for action. Thus the letter of the Charter had been exceeded in practice. 139/

Decision

At its 302nd plenary meeting on 3 November 1950, the General Assembly adopted 140/ by 52 votes to 5, with 2 abstentions, resolution 377 (V): "Uniting for peace". 141/

3. Resolution 498 (V)

a. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 498 (V)

145. By a telegram 142/ dated 4 December 1950 to the Secretary-General, the delegations of Cuba, Ecuador, France, Norway, the United Kingdom and the United States requested that the item "Intervention of the Central People's Government of the People's Republic of China in Korea" be included in the agenda of the fifth regular session of the General Assembly.

146. An explanatory memorandum 143/ was submitted on 5 December 1950, in which it was stated that armed forces of the Central People's Government of the People's Republic of China were conducting military operations against the United Nations forces in Korea. This question had been considered during November by the Security Council, which on 30 November had not adopted a draft resolution 144/ because of the negative vote of one of the permanent members, the USSR. Under these circumstances it was proposed that the General Assembly should consider, as an important and urgent question, the intervention of the Central People's Government of the People's Republic of China in Korea, with a view to making appropriate recommendations.

- 139/ For texts of relevant statements, see G A (V), 1st Com., vol. I,
 354th mtg.: United Kingdom, paras. 43 and 44; United States, paras. 6-18.
 355th mtg.: Uruguay, paras. 8-13.
 356th mtg.: Australia, paras. 12-23; Peru, paras. 28-39.
 357th mtg.: USSR, paras. 29-48.
 358th mtg.: Canada, paras. 49-51; Ecuador, paras. 1-10;
 Philippines, paras. 67-69.
 359th mtg.: Czechoslovakia, paras. 39-47.
 360th mtg.: Byelorussian SSR, paras. 53-58.
 361st mtg.: Colombia, paras. 67-73; Poland, para. 39; Sweden, paras. 7-12.
 362nd mtg.: Israel, paras. 2-4.
 363rd mtg.: Pakistan, paras. 46-48; Poland, paras. 31-38.
 364th mtg.: Australia, paras. 63 and 64; United Kingdom, paras. 2-16.
 366th mtg.: Czechoslovakia, paras. 68-72; Philippines, paras. 22-25;
 Poland, paras. 48-52; Syria, paras. 59-64.
 367th mtg.: Byelorussian SSR, paras. 3-5; Czechoslovakia, paras. 42 and 45;
 Poland, paras. 33-41.
 G A (V), Plen., vol. I,
 299th mtg.: Poland, paras. 179 and 180.
 300th mtg.: Byelorussian SSR, paras. 104-130; Czechoslovakia, para. 52.
 301st mtg.: Ukrainian SSR, paras. 176-183; USSR, paras. 109-137.
140/ G A (V), Plen., vol. I, 302nd mtg., para. 73.
141/ For text, see annex IV.
142/ G A (V), Annexes, a.i. 76, p. 2, A/1618.
143/ G A (V), Annexes, a.i. 76, pp. 2 and 3, A/1621.
144/ S C, 5th yr., 530th mtg., S/1894, pp. 22-25.

147. At the 319th plenary meeting on 6 December 1950, the General Assembly decided 145/ to include this item in its agenda. The First Committee considered the question at its 409th to 417th meetings, and at its 419th to 438th meetings. At its 417th meeting the First Committee approved a joint draft resolution 146/ submitted by the representatives of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, Philippines, Saudi Arabia, Syria and Yemen, requesting the President of the General Assembly to constitute a group of three persons, including the President, to determine the basis on which a satisfactory cease-fire in Korea could be arranged and to make recommendations to the General Assembly as soon as possible.

148. At its 324th plenary meeting on 14 December, the General Assembly adopted 147/ this draft resolution 148/ by 52 votes to 5, with one abstention.

149. At the 419th meeting of the First Committee on 3 January 1951, the representative of India presented the report 149/ of the Group on Cease-Fire in Korea expressing regret that the Group had been unable to pursue discussion of a satisfactory cease-fire arrangement so that no recommendation could usefully be made by it at that time.

150. At the 422nd meeting on 11 January 1951, the representative of Canada, on behalf of the Group on Cease-Fire in Korea, presented a supplementary report 150/ containing five principles concerning a cease-fire in Korea, the establishment of a free and united Korea and a peaceful settlement of Far Eastern problems.

151. The First Committee considered the reports of the Group on Cease-Fire in Korea from its 419th to 425th meetings, and at its 425th meeting, approved 151/ by 50 votes to 7, with 1 abstention, the five principles in the supplementary report. At the same meeting, the First Committee approved 152/ by 45 votes to 5, with 3 abstentions, a draft resolution 153/ submitted by Norway, inviting the Chairman of the First Committee to transmit the principles approved by it on 13 January 1951 to the Central People's Government of the People's Republic of China and inviting that Government to inform him whether it could accept those principles as a basis for the peaceful settlement of the Korean problem and other Far Eastern problems.

152. At its 426th meeting, the First Committee began consideration of the reply 154/ dated 17 January 1951 received from the Central People's Government of the People's Republic of China.

153. At the 428th meeting of the First Committee, the representative of the United States submitted a draft resolution 155/ which provided that the General Assembly should find that the People's Republic of China had engaged in aggression and should request a committee composed of the members of the Collective Measures Committee to consider additional measures to meet the aggression in Korea and to report thereon to the General Assembly.

145/ G A (V), Plen., vol. I, 319th mtg., para. 98.

146/ G A (V), 1st Com., vol. I, 417th mtg., para. 23.

147/ G A (V), Plen., vol. I, 324th mtg., para. 98.

148/ G A resolution 384 (V).

149/ G A (V), Annexes, a.i. 76, pp. 6-10, A/C.1/643.

150/ G A (V), Annexes, a.i. 76, p. 13, A/C.1/645.

151/ G A (V), 1st Com., vol. II, 425th mtg., para. 11.

152/ G A (V), 1st Com., vol. II, 425th mtg., para. 73.

153/ G A (V), 1st Com., vol. II, 425th mtg., A/C.1/651, para. 78.

154/ G A (V), Annexes, a.i. 76, pp. 14 and 15, A/C.1/653.

155/ G A (V), Annexes, a.i. 76, p. 15, A/C.1/654.

154. At its 438th meeting, the First Committee approved 156/ this draft resolution, as amended, by 44 votes to 7, with 8 abstentions.

155. At its 327th plenary meeting on 1 February 1951, the General Assembly considered the draft resolution adopted by the First Committee.

**b. SUMMARY OF RELEVANT CONSTITUTIONAL DISCUSSION IN THE PROCEEDINGS
CONNECTED WITH RESOLUTION 498 (V)**

156. During the first part of the consideration of the item "Intervention of the Central People's Government of the People's Republic of China in Korea" it was argued, on the one hand, that the question of the so-called intervention of China in Korea was not and never had been on the agenda of the Security Council, and that those who raised the question of the "Intervention of the Central People's Government of the People's Republic of China in Korea" intended to include an entirely new item in the agenda of the General Assembly. Therefore, they could not invoke the course envisaged in the illegal resolution 377 (V) and argue that the Security Council had not carried out its obligations. The United States draft resolution 157/ came within the competence not of the General Assembly but of the Security Council because it could be considered only under Chapter VII. While the General Assembly could make various recommendations under Articles 10 and 11, it could not make a finding or a determination as to an act of aggression. That power belonged exclusively to the Security Council under Article 39.

157. The view was also expressed that the majority of the Members of the United Nations had considered that the Central People's Government of the People's Republic of China was not the Government of China and, consequently, had refused it the right of representation in the United Nations. The question arose whether that Government could be declared an aggressor, if it merely had the status of a private political organization.

158. On the other hand, it was contended that the provision contained in the United States draft resolution which proposed that the General Assembly should find that the Central People's Government of the People's Republic of China "has itself engaged in aggression in Korea", was in accordance with fact. In view of the failure of the Security Council to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly, after exhausting all possible means for ensuring peace, was under obligation to exercise its powers under Article 11 and under resolution 377 (V). The situation anticipated in paragraph 1, section A, of resolution 377 A (V) had actually come to pass and the machinery provided for in that resolution should be set in motion. The General Assembly had to recognize the fact of armed aggression in Korea, and, consequently, it was its duty to declare the Central People's Government guilty of an act of aggression not only against the Republic of

156/ G A (V), 1st Com., vol. II, 438th mtg., para. 52.

157/ See para. 153 above.

Korea but also against the United Nations forces and to recommend appropriate collective measures for meeting the aggression. 158/

Decision

At its 327th plenary meeting on 1 February 1951 the General Assembly adopted 159/ by 44 votes to 7, with 9 abstentions, resolution 498 (V): "Intervention of the Central People's Government of the People's Republic of China in Korea". 160/

4. Resolution 500 (V)

a. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 500 (V)

159. The report 161/ of the Additional Measures Committee embodying its recommendations in the form of a draft resolution was transmitted 162/ to the Chairman of the First Committee on 16 May 1951 and the First Committee considered it at its 443rd and 444th meetings.

160. At the 443rd meeting of the First Committee, the representatives of the USSR, 163/ Poland, 164/ the Byelorussian SSR, 165/ the Ukrainian SSR 166/ and Czechoslovakia 167/ stated that the question of applying an embargo was a measure exclusively within the competence of the Security Council and outside the competence of the General Assembly, and that in view of that fact they could not participate in the discussion of the report.

161. At its 444th meeting the First Committee adopted 168/ by 45 votes to none, with 9 abstentions, the draft resolution, as amended, recommended by the Additional Measures Committee. The representatives of the Byelorussian SSR, Czechoslovakia, Poland, the Ukrainian SSR and the USSR did not participate in the voting.

- 158/ For texts of relevant statements, see G A (V), 1st Com.,
 410th mtg.: Uruguay, para. 3.
 426th mtg.: Peru, para. 69; United States, paras. 19 and 20.
 427th mtg.: Brazil, para. 20; Chile, para. 5; Cuba, para. 12.
 428th mtg.: Colombia, paras. 36 and 37; Dominican Republic, paras. 15 and 19; Panama, para. 54; United States, para. 3; Uruguay, para. 22.
 431st mtg.: New Zealand, para. 43.
 432nd mtg.: Canada, para. 20; Israel, para. 53;
 434th mtg.: France, para. 43.
 435th mtg.: Iceland, para. 22; India, paras. 32 and 33; Norway, para. 42.
 436th mtg.: Poland, para. 29.
 437th mtg.: Canada, para. 166; Sweden, para. 71; United Kingdom, para. 20.
 G A (V), Plen.,
 319th mtg.: Philippines, paras. 3 and 4; Poland, paras. 79 and 80.
 327th mtg.: India, para. 75.
159/ G A (V), Plen., vol. II, 327th mtg., para. 93.
160/ For text, see annex IV.
161/ G A (V), Annexes, a.i. 76, pp. 20 and 21, A/1799.
162/ See G A (V), Annexes, a.i. 76, p. 21, A/1802.
163/ G A (V), 1st Com., vol. II, 443rd mtg., para. 11.
164/ G A (V), 1st Com., vol. II, 443rd mtg., para. 18.
165/ G A (V), 1st Com., vol. II, 443rd mtg., para. 22.
166/ G A (V), 1st Com., vol. II, 443rd mtg., para. 25.
167/ G A (V), 1st Com., vol. II, 443rd mtg., para. 26.
168/ G A (V), 1st Com., vol. II, 444th mtg., para. 24.

162. At its 330th plenary meeting, the General Assembly considered the draft resolution approved by the First Committee.

**b. SUMMARY OF RELEVANT CONSTITUTIONAL DISCUSSION IN THE PROCEEDINGS
CONNECTED WITH RESOLUTION 500 (V)**

163. During the consideration of the report 169/ of the Additional Measures Committee and the draft resolution recommended by the Committee, it was contended on the one hand that the draft resolution envisaged sanctions of an economic character directed against the Government of the People's Republic of Korea and against the Central People's Government of the People's Republic of China. The whole question of embargo came under Chapter VII and, therefore, it was the duty of the General Assembly to refer it under Article 11 (2) to the Security Council, which had exclusive competence in the matter, for its decision. An action of this kind was within the exclusive competence of the Security Council and the General Assembly was not competent, therefore, to consider the question of an embargo and had no power to make recommendations of this kind. For this reason the draft resolution which involved the actual imposition of sanctions under Article 41 flagrantly violated Article 11 (2) and was illegal. If it was contended that the course of action followed in this question had been lawful and corresponded to resolution 377 (V), the fact was that even this illegal resolution had not been adhered to. Resolution 377 (V) had called upon the General Assembly to act in the absence of unanimity among the permanent members of the Security Council. However, in the present case, the question of sanctions had never been discussed by the Security Council.

164. It was argued, on the other hand, that even if the draft resolution was considered to fall within the scope of the last sentence of Article 11 (2), the requirements of that provision had already been observed. The resolution adopted by the Security Council on 27 June 1950, concerning aggression against the Republic of Korea, recommended "that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area".

165. The relevant item had been removed subsequently from the agenda of the Security Council, and the General Assembly, in proceeding to exercise its duties for the maintenance of international peace and security, had been taking steps strictly within its own competence. Assuming that the conditions stipulated in Article 11 (2) had to be met, the fact was that the item had been withdrawn from the agenda of the Security Council, in accordance with Article 12. For these reasons the draft resolution was of undoubted legal validity, and in view of its urgent character the General Assembly could deal with the matter in accordance with resolution 377 A (V), section A, paragraph 1. 170/

169/ G A (V), Annexes, a.i. 76, pp. 20 and 21, A/1799.

170/ For texts of relevant statements, see G A (V), 1st Com., vol. II,

443rd mtg.: Czechoslovakia, para. 26; Poland, paras. 13 and 14; USSR, para. o.

444th mtg.: Poland, para. 28; USSR, para. 26; United States, para. 25.

G A (V), Plen., vol. II,

330th mtg.: Byelorussian SSR, paras. 101, 102 and 107; Czechoslovakia, paras. 87, 89; Ecuador, paras. 31-33; Poland, paras. 69-72; 122-129, 131; Ukrainian SSR, para. 65; USSR, paras. 37-42, 55 and 56, 122-124; United States, paras. 109-118.

Decision

At its 330th plenary meeting on 18 May 1951, the General Assembly adopted 171/ by 47 votes to none, with 8 abstentions resolution 500 (V): "Additional measures to be employed to meet the aggression in Korea". 172/

*5. Resolution 503 (VI)***a. PRECIS OF THE PROCEEDINGS CONNECTED WITH RESOLUTION 503 (VI) 173/****b. SUMMARY OF RELEVANT CONSTITUTIONAL DISCUSSION IN THE PROCEEDINGS
CONNECTED WITH RESOLUTION 503 (VI)**

166. During the consideration of the first report of the Collective Measures Committee it was argued, on the one side, that no provision of the Charter gave the least support to the theory that jurisdiction to undertake enforcement measures to maintain international peace and security had been entrusted simultaneously to the Security Council and to the General Assembly. The report of the Collective Measures Committee which amounted to a programme of sanctions, reserved under the Charter to the Security Council, involved the transfer to the General Assembly of powers exclusively within the competence of the Security Council and the Military Staff Committee. According to the proposals of the Collective Measures Committee, the General Assembly was to establish an illegal authority to replace the Military Staff Committee on the grounds of the latter's alleged inactivity. This proposal violated the Charter as did the proposal concerning agreements to be concluded with participating States and would be contrary to Article 43. Thus, the functions of the Security Council and of the Military Staff Committee would be illegally arrogated by the General Assembly and an executive military authority. Therefore, the decision of the General Assembly concerning the measures contained in the report of the Collective Measures Committee would violate Article 11 (2), according to which any question requiring action should be referred by the General Assembly to the Security Council.

167. It was contended, on the other side, that it was only when the Security Council was prevented from taking emergency action because of the veto that its collective security functions would be partially assumed by the General Assembly. If the permanent members of the Security Council were unable to agree in determining an act of aggression, although aggression had, in fact, occurred, the determination of such aggression must be made outside the Security Council, that is to say, by the General Assembly, which, however, could do no more than recommend a line of action by Member States. The report explicitly recognized that the Security Council was responsible for the setting up of an armed international force in accordance with Article 43. However, the Security Council had not yet carried out its obligation to negotiate agreements provided for in Article 43 and the Military Staff Committee had been prevented from functioning. Therefore, as long as there had been no implementation of the provisions of Article 43, the General Assembly must develop means whereby Member States could act

171/ G A (V), Plen., vol. II, 330th mtg., para. 135. Byelorussian SSR, Czechoslovakia, Poland, Ukrainian SSR and the USSR did not participate in the voting.

172/ For text, see annex IV.

173/ See paras 91-100 above.

together effectively and promptly in defence of peace and thus set up alternative machinery for collective defence. 174/

Decision

At its 359th plenary meeting, on 12 January 1952, the General Assembly adopted, 175/ by 51 votes to 5, with 6 abstentions, resolution A, and by 57 votes to none, with 2 abstentions, resolution B of resolution 503 (VI): "Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter". 176/

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- 174/ For texts of relevant statements, see G A (VI), 1st Com.,
476th mtg.: United States, para. 25.
477th mtg.: USSR, para. 32.
478th mtg.: Indonesia, paras. 13 and 14, 16.
479th mtg.: Czechoslovakia, paras. 22-24, 26 and 27; Peru, para. 6.
480th mtg.: France, paras. 9-11; Lebanon, para. 39; Netherlands, para. 14;
Philippines, para. 48; Syria, para. 60.
481st mtg.: Byelorussian SSR, paras. 31 and 32; Chile, para. 15;
Iran, para. 23; Israel, paras. 53 and 54; Poland, para. 46;
Ukrainian SSR, para. 7.
482nd mtg.: Canada, paras. 11 and 12; Ecuador, para. 38.
483rd mtg.: United Kingdom, paras. 17, 19 and 20; United States, paras. 51
and 52.
485th mtg.: Czechoslovakia, para. 6; Poland, para. 19.
G A (VI), Plen.,
359th mtg.: France, para. 121.
175/ G A (VI), Plen., 359th mtg., para. 143.
176/ For text, see annex IV.

ANNEX I

Tabulation of agenda items bearing upon Article 11

A. Agenda items bearing upon the general principles of co-operation in the maintenance of international peace and security

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Study of methods for the promotion of international co-operation in the political field: report of the Interim Committee of the General Assembly	G A (III/1)	19	
	G A (III/2)	4	268 (III)
Establishment of a permanent commission of good offices	G A (V)	73	379 (V)

B. Agenda items bearing upon the principles governing disarmament and the regulation of armaments

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Establishment of a commission to deal with the problems raised by the discovery of atomic energy and other related matters	G A (I/1)	Supplementary list: 4	1 (I)
Presence of troops of States Members of the United Nations on non-enemy territories	G A (I/2)	44	42 (I)
General reduction of armaments	G A (I/2)	56	41 (I)
Reports of the Atomic Energy Commission; resolution of the Security Council	G A (III/1)	20	191 (III)
Prohibition of the atomic weapon and reduction by one-third of the armaments and armed forces of the permanent members of the Security Council	G A (III/1)	70	192 (III)
International control of atomic energy: resolutions of the Atomic Energy Commission (transmitted by the Security Council) and report of the permanent members of the Atomic Energy Commission	G A (IV)	23	299 (IV)

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Prohibition of the atomic weapon and reduction by one-third of the armaments and armed forces of the permanent members of the Security Council: report of the Security Council	G A (IV)	24	300 (IV)
International control of atomic energy	G A (V)	26	496 (V)
International control of atomic energy: report of the Committee of Twelve	G A (VI)	16	502 (VI)
Regulation, limitation and balanced reduction of all armed forces and all armaments	G A (VI)	66	502 (VI)
Regulation, limitation and balanced reduction of all armed forces and all armaments: report of the Disarmament Commission	G A (VII)	17	704 (VII)
Regulation, limitation and balanced reduction of all armed forces and all armaments: report of the Disarmament Commission	G A (VIII)	23	715 (VIII)

C. Agenda items of a general political character, bearing, inter alia, upon the principles governing disarmament and the regulation of armaments

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Condemnation of the preparations for a new war, and conclusion of a five-Power pact for the strengthening of peace	G A (IV)	67	290 (IV)
Declaration on the removal of the threat of a new war and the strengthening of peace and security among the nations	G A (V)	69	380 (V)
Measures to combat the threat of a new world war and to strengthen peace and friendship among the nations	G A (VI)	67	504 (VI)
Measures to avert the threat of a new world war and measures to strengthen peace and friendship among the nations	G A (VII)	72	705 (VII)

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Measures to avert the threat of a new world war and to reduce tension in international relations	G A (VII)	73	No resolution adopted

D. Agenda items bearing upon the maintenance of international peace and security

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Relations of Members of the United Nations with Spain	G A (I)	58	39 (I)
Relations of Members of the United Nations with Spain	G A (II)	18	114 (II)
Threats to the political independence and territorial integrity of Greece	G A (II)	45	109 (II)
Question of Franco Spain: implementation of the resolutions and recommendations of the General Assembly of 12 December 1946 and of 17 November 1947	G A (III/1) G A (III/2)	55 12	No resolution adopted
Threats to the political independence and territorial integrity of Greece: reports of the United Nations' Special Committee on the Balkans	G A (III/1)	15	193 (III)
Appeal to the great Powers to renew their efforts to compose their differences and establish a lasting peace	G A (III/1)	72	190 (III)
Threats to the political independence and territorial integrity of Greece: report of the United Nations Special Committee on the Balkans	G A (IV)	21	288 (IV)
Threats to the political independence and territorial integrity of China and to the peace of the Far East, resulting from Soviet violations of the Sino-Soviet Treaty of Friendship and Alliance of 14 August 1945, and from Soviet violations of the Charter of the United Nations	G A (IV)	68	291 (IV) 292 (IV)
Threats to the political independence and territorial integrity of Greece: (a) Report of the United Nations Special Committee on the Balkans; (b) Repatriation of Greek children: report of the Secretary-General	G A (V)	22	382 (V)

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<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Threats to the political independence and territorial integrity of China and to the peace of the Far East, resulting from Soviet violations of the Sino-Soviet Treaty of Friendship and Alliance of 14 August 1945 and from Soviet violations of the Charter of the United Nations: report of the Interim Committee of the General Assembly	G A (V)	23	383 (V)
The problem of the independence of Korea: report of the United Nations Commission on Korea	G A (V)	24	376 (V)
Relations of States Members and specialized agencies with Spain	G A (V)	62	386 (V)
United action for peace	G A (V)	68	377 (V)
Complaint by the Union of Soviet Socialist Republics regarding aggression against China by the United States of America	G A (V)	70	No resolution adopted
Duties of States in the event of the outbreak of hostilities	G A (V)	72	378 (V)
Complaint by the Union of Soviet Socialist Republics regarding the violation of Chinese air space by the Air Force of the United States of America and the machine-gunning and bombing of Chinese territory by that air force, and against the bombardment and illegal inspection of a merchant ship of the People's Republic of China by a military vessel of the United States	G A (V)	75	No resolution adopted
Intervention of the Central People's Government of the People's Republic of China in Korea	G A (V)	76	384 (V) 498 (V) 500 (V)
The problem of the independence of Korea: report of the United Nations Commission for the Unification and Rehabilitation of Korea	G A (VI)	17	507 I (VI)
Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter: report of the Collective Measures Committee	G A (VI)	18	503 (VI)

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Threats to the political independence and territorial integrity of Greece: (a) Report of the United Nations Special Committee on the Balkans; (b) Repatriation of Greek children: reports of the Secretary-General and of the International Red Cross organizations	G A (VI)	19	508 (VI)
Threats to the political independence and territorial integrity of China and to the peace of the Far East, resulting from Soviet violations of the Sino-Soviet Treaty of Friendship and Alliance of 14 August 1945 and from Soviet violations of the Charter of the United Nations	G A (VI)	23	505 (VI)
Complaint of aggressive acts of the United States of America and its interference in the domestic affairs of other countries, as instanced by the appropriation of 100 million dollars to finance the recruitment of persons and armed groups in the Soviet Union, Poland, Czechoslovakia, Hungary, Romania, Bulgaria, Albania and a number of other democratic countries, as well as outside the territory of those countries	G A (VI)	69	No resolution adopted
Korea: (a) Reports of the United Nations Commission for the Unification and Rehabilitation of Korea <u>a/</u>	G A (VII)	16 (a)	610 (VII) 711 (VII) 712 (VII)
Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter: report of the Collective Measures Committee	G A (VII)	18	703 (VII)
The Tunisian question	G A (VII)	60	611 (VII)
The question of Morocco	G A (VII)	65	612 (VII)

a/ At the second series of resumed meetings of the seventh session the title of this item was: "The Korean question".

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Interference of the United States of America in the internal affairs of other States as manifested by the organization on the part of the Government of the United States of America of subversive and espionage activities against the Union of Soviet Socialist Republics, the People's Republic of China, the Czechoslovak Republic and other people's democracies	G A (VII)	71	No resolution adopted
Complaint by the Union of Burma regarding aggression against it by the Government of the Republic of China	G A (VII)	77	707 (VII)
The Korean question: (a) Report of the United Nations Commission for the Unification and Rehabilitation of Korea	G A (VIII)	18 (a)	716 (VIII)
Question of impartial investigation of charges of use by United Nations forces of bacterial warfare	G A (VIII)	24	714 (VIII)
Complaint by the Union of Burma regarding aggression against it by the Government of the Republic of China: report of the Government of the Union of Burma	G A (VIII)	25	717 (VIII)
The Tunisian question	G A (VIII)	56	No resolution adopted
The question of Morocco	G A (VIII)	57	No resolution adopted

E. Agenda items bearing upon the maintenance of international peace
and the general principles of co-operation in this field

<u>Title of the item</u>	<u>Assembly Session</u>	<u>Item No.</u>	<u>Resolution No.</u>
Establishment of an interim committee of the General Assembly on peace and security	G A (II)	59	111 (II)
Advisability of establishing a permanent committee of the General Assembly: report of the Interim Committee of the General Assembly	G A (III/1)	18	196 (III)
Report of the Interim Committee of the General Assembly: (a) Promotion of international co-operation in the political field; (b) Constitution, duration and terms of reference of the Interim Committee	G A (IV)	25	295 (IV)

ANNEX II

Tabulation of provisions of resolutions of the General Assembly bearing upon Article 11

A. Provisions bearing upon the general principles of co-operation in the maintenance of international peace and security

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>	
	<u>For</u>	<u>Against</u>	<u>Abstentions</u>	
111 (II). Establishment of an Interim Committee of the General Assembly	41	6	6	Establishing, for the period between the second and the third regular sessions of the General Assembly, an interim committee of the General Assembly which, <u>inter alia</u> , would consider and report on methods to be adopted to give effect to that part of Article 11 (1), which deals with the general principles of co-operation in the maintenance of international peace and security (para. 2 (c)).
196 (III). Re-establishment of the Interim Committee of the General Assembly	40	6	1	Re-establishing the Interim Committee, for the period between the third and the fourth regular sessions of the General Assembly, entrusting it, <u>inter alia</u> , with functions in connexion with Article 11 (1), similar to those entrusted to the Committee by resolution 111 (II) (para. 2 (c)).
295 (IV). Re-establishment of the Interim Committee of the General Assembly	45	5	4	Re-establishing the Interim Committee, to meet when the General Assembly is not actually in regular session, entrusting it, <u>inter alia</u> , with functions in connexion with Article 11 (1), similar to those entrusted to the Committee by resolution 196 (III) (para. 2 (c)).
268 A (III). Study of methods for the promotion of international co-operation in the political field	45	6	1	Instructing the Secretary-General to prepare a revised text of the General Act for the Pacific Settlement of International Disputes.

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
268 B (III). Study of methods for the promotion of international co-operation in the political field	47	6 1	Recommending the appointment of a rapporteur or conciliator for a situation or dispute brought before the Security Council.
268 C (III). Study of methods for the promotion of international co-operation in the political field	48	2 4	Proposing amendments to the rules of procedure of the General Assembly.
268 D (III). Study of methods for the promotion of international co-operation in the political field	49	6 2	Recommending the creation of a panel for inquiry and conciliation.
379 (V). Establishment of a permanent commission of good offices	45	5 3	Referring to the Interim Committee of the General Assembly item 73: Establishment of a permanent commission of good offices, and recommending to the Interim Committee to study this item in connexion with the question of the establishment of a permanent organ of conciliation (paras. 1 and 2).

B. Provisions bearing upon the principles governing disarmament and regulation of armaments

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
1 (I). Establishment of a Commission to deal with the problems raised by the discovery of atomic energy	Unanimity		Establishing a Commission to make proposals <u>inter alia</u> , for the elimination of atomic weapons and weapons of mass destruction and for safeguards to protect complying States against violations and evasions (paras. 1 and 5 (c and d)).

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>	
For	Against	Abstentions		
41 (I). Principles governing the general regulation and reduction of armaments	Unanimity		Urging fulfilment by the Atomic Energy Commission of its terms of reference (para. 3); recommending to the Security Council to take various actions relative to the general regulation and reduction of armaments and armed forces (paras. 2, 4, 5); to accelerate the placing at its disposal of the armed forces mentioned in Article 43 of the Charter (para. 7); deciding the establishment of an international system of control and inspection (para. 5); recommending to the Members to take various actions (para. 7).	
42 (I). Information on armed forces to be supplied by Members of the United Nations	36	6	4	Calling upon the Security Council to determine the information to be furnished by the Members of the United Nations in order to give effect to this resolution.
191 (III). Reports of the Atomic Energy Commission	40	6	4	Approving specific parts of the first and second reports of the Atomic Energy Commission (para. 1); requesting its six permanent members to consult in order to determine whether there existed a basis for agreement on the international control of atomic energy (para. 3); calling upon the Commission to survey the programme of work and to continue its study of useful subjects (para. 4).
192 (III). Prohibition of the atomic weapon and reduction by one-third of the armaments and armed forces of the permanent members of the Security Council	43	6	1	Recommending to the Security Council to pursue the study of the regulation and reduction of conventional armaments and armed forces through the Commission for Conventional Armaments (fifth paragraph); trusting that the Commission would formulate proposals for the receipt, checking and publication by an international organ of control of information to be supplied by Member States (sixth paragraph).

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
290 (IV). Essentials of peace	55	5	1
			Calling upon every nation to co-operate to attain effective international regulation of conventional armaments; to agree to the exercise of national sovereignty jointly with other nations to the extent necessary to attain international control of atomic energy which would make effective the prohibition of atomic weapons (paras. 12 and 15).
295 (IV). International control of atomic energy	49	5	3
			Requesting the permanent members of the Atomic Energy Commission to continue their consultations (para. 5).
300 (IV). Regulation and reduction of conventional armaments and armed forces	44	5	5
			Approving the proposals of the Commission for Conventional Armaments (para. 1); recommending the Security Council to continue its study of the regulation and reduction of conventional armaments and armed forces (para. 4).
380 (V). Peace through deeds	50	5	1
			Determining that for the realization of lasting peace and security it was indispensable that every nation agree: (a) to accept effective international control of atomic energy, under the United Nations, in order to make effective the prohibition of atomic weapons; (b) to strive for the control and elimination, under the United Nations, of all other weapons of mass destruction; (c) to regulate all armaments and armed forces under a United Nations system of control and inspection (para. 2 (2, a-c)).
406 (V). International control of atomic energy	47	5	3
			Establishing a committee of twelve to report on the advisability of merging the functions of the Atomic Energy Commission and the Commission for Conventional Armaments and placing them under a consolidated disarmament commission.

Number and title of resolution	Vote		Précis of the provisions
	For	Against	
502 (VI). Regulation, limitation and balanced reduction of all armed forces and all armaments; international control of atomic energy	42	5	7
504 (VI). Measures to combat the threat of a new world war and to strengthen peace and friendship among the nations	40	5	3
704 (VII). Regulation, limitation and balanced reduction of all armed forces and all armaments; report of the Disarmament Commission	52	5	3
714 (VIII). Question of impartial investigation of charges of use by United Nations forces of bacterial warfare	47	0	12
715 (VIII). Regulation, limitation and balanced reduction of all armed forces and all armaments; report of the Disarmament Commission	54	0	5

Establishing a Disarmament Commission, dissolving the Atomic Energy Commission; and recommending the Security Council to dissolve the Commission for Conventional Armaments (paras. 1 and 2); directing the Disarmament Commission to prepare specific proposals and plans (paras. 3-6); declaring that a conference of all States should be convened to consider the proposals for a draft treaty prepared by the Commission (para. 8).

Deciding to refer to the Disarmament Commission proposals in paragraphs 3 to 7 of A/C.1/698 (para. 1).

Taking note of the report of the Disarmament Commission; reaffirming resolution 502 (VI); requesting the Commission to report to the General Assembly and the Security Council no later than 1 September 1953 (paras. 1-3).

Referring to the Disarmament Commission USSR draft resolution A/C.1/L.67 for consideration (para. 1).

Taking note of the report of the Disarmament Commission (para. 1); requesting it to continue its efforts to reach agreement (para. 2); suggesting it to establish a sub-committee consisting of the Powers principally concerned to seek, in private, an acceptable solution and to arrange for the sub-committee to hold its private meetings as appropriate in different countries.

C. Provisions bearing upon the maintenance of international peace and security

1. Provisions recommending means for the settlement of questions relating to the maintenance of international peace and security

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
190 (II). Threats to the political independence and territorial integrity of Greece	40	6	11
	Calling upon Albania, Bulgaria, Yugoslavia on the one hand, and Greece on the other, to co-operate in the settlement of their disputes by peaceful means, and to that end recommending: the establishment of normal diplomatic relations; the establishment of frontier conventions; voluntary repatriation of the refugees; the study of the practicability of the voluntary transfer of minorities (para. 5).		
190 (III). Appeal to the great Powers to renew their efforts to compose their differences and establish a lasting peace	Unanimity		
	Recommending to the Powers signatories to the Moscow agreements of 24 December 1945 and to the Powers which acceded thereto, to secure the final settlement of the war and the conclusion of all the peace settlements (para. 3).		
195 A (III): Threats to the political independence and territorial integrity of Greece	47	6	0
	Calling upon Albania, Bulgaria, Yugoslavia to co-operate with Greece in the settlement of their dispute in accordance with the recommendations in resolution 109 (II) (para. 7).		
195 B (III): Threats to the political independence and territorial integrity of Greece	53	0	0
	Recommending to Greece, Albania, Bulgaria and Yugoslavia to renew their conventions for the settlement of frontier questions or to conclude new ones (second paragraph).		

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
288 A (IV). Threats to the political independence and territorial integrity of Greece	50	6	2
377 C (V). Uniting for peace	52	5	2
505 B (VI). Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter	57	0	2
611 (VII). The Tunisian question	44	3	8
612 (VII). The question of Morocco	45	3	11

Calling upon Albania, Bulgaria and Yugoslavia to co-operate with Greece in the settlement of their differences by peaceful means, in accordance with the provisions of Article 2 (3) of the Charter and to that end recommending: the continuation of further efforts by Greece and Yugoslavia through diplomatic channels to resolve their differences; the establishment of normal diplomatic relations between Albania and Bulgaria on the one side and Greece on the other; the renewal of frontier conventions or conclusion of new ones (para. 5).

Recommending to the permanent members of the Security Council to meet and discuss all problems likely to threaten international peace and hamper the activities of the United Nations with a view to their resolving fundamental differences and reaching agreement in accordance with the letter and the spirit of the Charter (sixth paragraph (a)).

Recommending to the Security Council, in accordance with Article 28 of the Charter, to convene a periodic meeting to consider measures for removing the tension in international relations and the establishment of friendly relations between countries whenever such a meeting would usefully serve this purpose (second paragraph).

Appealing to the parties concerned to conduct their relations and settle their disputes in accordance with the spirit of the Charter and to refrain from any acts or measures likely to aggravate the present tension (para. 3).

Appealing to the parties to conduct their relations in an atmosphere of good will, mutual confidence and respect and to settle their disputes in accordance with the spirit of the Charter, thus refraining from any acts or measures likely to aggravate the present tension (para. 3).

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>	
	<u>For</u>	<u>Against</u>	<u>Abstentions</u>	
707 (VII). Complaint by the Union of Burma regarding aggression against it by the Government of the Republic of China	59	0	1	Recommending the continuation of negotiations in progress in order to put an end to the serious situation by means of the immediate disarmament and withdrawal of foreign forces from the territory of Burma or by means of their disarmament and internment (para. 4).
711 A (VII). The Korean question	43	5	10	Recommending that the side contributing armed forces under the Unified Command in Korea should have as participants in the political conference to be held in accordance with the Armistice Agreement those among the Member States contributing armed forces which would desire to be represented, together with the Republic of Korea (para. 5 (a)).
711 B (VII). The Korean question	55	1	1	Recommending that the USSR participate in the Korean political conference provided the other side desired it (para. 2).
717 (VIII). Complaint by the Union of Burma regarding aggression against it by the Government of the Republic of China	56	0	1	Urging that efforts be continued on the part of those concerned for the evacuation or internment of foreign forces and the surrender of all arms (para. 4); reaffirming resolution 707 (VII) (para. 5).
2. Provisions recommending the taking of specific measures				
39 (I). Relations of Members of the United Nations with Spain	34	6	13	Recommending that the Franco Government of Spain be debarred from membership in international agencies established by or brought into relationship with the United Nations, and from participation in conferences or other activities which might be arranged by the United Nations or by these agencies, until a new and acceptable government was formed in Spain (sixth paragraph); recommending that all Members of the United Nations immediately recall from Madrid their Ambassadors and Ministers plenipotentiary accredited there (ninth paragraph).

Number and title of resolution	Vote		Précis of the provisions
	For	Against	
109 (II). Threats to the political independence and territorial integrity of Greece	40	6	11
193 A (III). Threats to the political independence and territorial integrity of Greece	47	6	0
193 B (III). Threats to the political independence and territorial integrity of Greece	53	0	0
288 A (IV). Threats to the political independence and territorial integrity of Greece	50	6	2

Calling upon Albania, Bulgaria and Yugoslavia to do nothing which could furnish aid and assistance to the guerrillas fighting against the Greek Government (para. 4).

Calling upon Albania, Bulgaria and Yugoslavia to cease forthwith rendering any assistance or support in any form to the guerrillas in fighting against the Greek Government, including the use of their territories as a base for the preparation or launching of armed action (para. 6); recommending to all Members of the United Nations and to all other States that their Governments refrain from any action designed to assist directly or through any other Government any armed group fighting against the Greek Government (para. 9).

Recommending that Greece, on the one hand, and Bulgaria and Albania on the other, establish diplomatic relations with each other (first paragraph).

Calling upon Albania, Bulgaria and other States concerned to cease forthwith rendering any assistance or support to the guerrillas in fighting against Greece, including the use of their territories as a base for the preparation or launching of armed actions (para. 5); recommending to all Members of the United Nations and all other States: (a) to refrain from any action designed to assist directly or through any other Government any armed group fighting against Greece; (b) to refrain from the direct or indirect provision of arms or other materials of war to Albania and Bulgaria until the Special Committee or another competent United Nations organ had determined that the unlawful assistance of these States to the Greek guerrillas had ceased (para. 4).

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
291 (IV). Promotion of the stability of international relations in the Far East	45	5 0	Calling upon all States to refrain from (a) seeking to acquire spheres of influence or to create foreign-controlled régimes within the territory of China; (b) seeking to obtain special rights or privileges within the territory of China (para. 4).
378 A (V). Duties of States in the event of the outbreak of hostilities	49	5 1	Recommending that if a State becomes engaged in armed conflict with another State or States, it take all steps practicable and compatible with the right of self-defence to bring the armed conflict to an end at the earliest possible moment; in particular, that it make a public statement as to its readiness to discontinue military operations and notify the Secretary-General of this statement and of the circumstances in which the conflict has arisen (para. 1 (a), (b) and (c)).
498 (V). Intervention of the Central People's Government of the People's Republic of China in Korea	44	7 9	Finding that the Central People's Government of the People's Republic of China had itself engaged in aggression in Korea, the General Assembly called upon it to cease its forces and nationals in Korea to cease hostilities against the United Nations forces and to withdraw from Korea (paras. 1 and 2); called upon all States and authorities to continue to lend every assistance to the United Nations action in Korea (para. 4) and to refrain from giving any assistance to the aggressors in Korea (para. 5).

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
500 (V). Additional measures to be employed to meet the aggression in Korea	47	0	8 b/ Recommending to every State to apply an embargo on the shipment to areas under control of the Central People's Government of the People's Republic of China and of the North Korean authorities of arms, ammunition and implements of war, atomic energy materials, petroleum, transportation materials of strategic value and items useful in the production of arms, munitions and implements of war; to apply controls to give effect to the embargo; to prevent the circumvention of controls on shipments applied by other States; to co-operate with other States in carrying out the purposes of the embargo (para. 1, (a)-(d)).
707 (VII). Complaint by the Union of Burma regarding aggression against it by the Government of the Republic of China	59	0	1 Urging all States to afford the Government of the Union of Burma on its request all assistance to facilitate by peaceful means the evacuation of foreign forces from Burma and to refrain from furnishing any assistance to these forces which might enable them to remain in the territory of Burma or to continue their hostile acts against that country (para. 5).
717 (VIII). Complaint by the Union of Burma regarding aggression against it by the Government of the Republic of China	56	0	1 Reaffirming resolution 707 (VII) and urging all States to refrain from furnishing any assistance to foreign forces which might enable them to remain in the territory of the Union of Burma or to continue their hostile acts against that country (paras. 5 and 6).

b/ Five delegations declared that they did not wish to participate in the vote.

<u>Number and title of resolution</u>	<u>For</u>	<u>Against</u>	<u>Abstentions</u>	<u>Vote</u>	<u>Précis of the provisions</u>
3. <u>Provisions bearing upon the establishment of subsidiary organs or their functions</u>					
109 (II). Threats to the political independence and territorial integrity of Greece	40	6	11		Establishing a Special Committee (i) to observe the compliance by the four Governments concerned with recommendations of the General Assembly; (ii) to assist them in the implementation of such recommendations (para. 6).
111 (III). Establishment of an Interim Committee of the General Assembly	41	6	6		Establishing, for the period between the second and the third sessions of the General Assembly an Interim Committee of the General Assembly to consider, <i>inter alia</i> , and report to the General Assembly on any dispute or any situation which in virtue of Articles 11 (2), 14 or 35, had been proposed for inclusion in the agenda of the General Assembly by any Member of the United Nations or brought before it by the Security Council (para. 2 (b)).
195 A (III). Threats to the political independence and territorial integrity of Greece	47	6	0		Continuing in being the Special Committee with the functions conferred upon it by resolution 109 (II) (para. 10).
196 (III). Re-establishment of the Interim Committee of the General Assembly	45	5	4		Re-establishing for the period between the third and the fourth sessions of the General Assembly, the Interim Committee to consider, <i>inter alia</i> , and report to the General Assembly on any dispute or any situation which, in virtue of Articles 11 (2), 14 or 35, had been proposed for inclusion in the agenda of the General Assembly by any Member of the United Nations, or by any non-Member State under Articles 11 (2), or 35, or had been brought before the General Assembly by the Security Council (para. 2 (b)).
208 A (IV). Threats to the political independence and territorial integrity of Greece	50	6	2		Instructing again the Special Committee to be available to assist the four Governments concerned in the implementation of resolutions of the General Assembly (para. 8).

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
295 (IV). Re-establishment of the Interim Committee of the General Assembly	45	5 4	Re-establishing the Interim Committee to meet when the General Assembly is not actually in regular session with functions, <i>inter alia</i> , as provided for in resolution 196 (III) (para. 2 (b)).
376 (V). The problem of the independence of Korea	47	5 7	Establishing the United Nations Commission for the Unification and Rehabilitation of Korea and defining its functions (para. 2 (a) and (c)); resolving that pending its arrival in Korea, the Governments of the States represented on the Commission should form an Interim Committee at the seat of the United Nations (para. 2 (b)).
377 A (V), section B. Uniting for peace	52	5 2	Establishing a Peace Observation Commission to observe and report on the situation in any area where there existed international tension likely to endanger the maintenance of international peace and security (para. 3).
377 A (V), section D. Uniting for peace	52	5 2	Establishing a Collective Measures Committee to study and report to the Security Council and to the General Assembly on methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter (para. 11).
382 B (V). Threats to the political independence and territorial integrity of Greece	53	6 0	Continuing the Special Committee in being, unless it recommended its own dissolution to the Interim Committee and authorizing the Interim Committee to act on such recommendation (paras. 2 and 3).
498 (V). Intervention of the Central People's Government of the People's Republic of China in Korea	44	7 9	Requesting a Committee composed of the members of the Collective Measures Committee to consider additional measures to be employed to meet the aggression in Korea (para. 6).

Number and title of resolution	Vote		Précis of the provisions
	For	Against Abstentions	
500 (V). Additional measures to be employed to meet the aggression in Korea	47	0	8 c/ Requesting the Additional Measures Committee to report to the General Assembly on the effectiveness of the embargo and the desirability of continuing, extending or relaxing it and to continue consideration of additional measures to be employed to meet aggression in Korea (para. 2 (a) and (b)); and requesting the Good Offices Committee to continue its good offices (para. 3).
503 A (VI). Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter	51	5	3 Directing the Collective Measures Committee to continue its studies on methods which might be used to maintain and strengthen international peace and security (para. 9).
508 A (VI). Threats to the political independence and territorial integrity of Greece	48	5	1 Deciding to discontinue the Special Committee (para. 4).
508 B (VI). Threats to the political independence and territorial integrity of Greece	48	5	1 Resolving to request the Peace Observation Commission to establish a Balkan sub-commission (third paragraph).
705 (VII). Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter: report of the Collective Measures Committee	50	5	3 Directing the Collective Measures Committee to pursue studies to strengthen the capability of the United Nations to maintain peace, to continue the examination of information received from States pursuant to resolutions 577 (V), 503 (VI) and 705 (VII) and to suggest to the Security Council and the General Assembly ways and means to encourage further preparatory action by States (para. 4).

c/ Five delegations declared that they did not wish to participate in the vote.

Number and title of resolution	Vote	For	Against	Abstentions	Précis of the provisions
4.		Provisions requesting action by the President of the General Assembly			
288 C (IV). Threats to the political independence and territorial integrity of Greece	adopted d/				To ascertain the views of the Greek Government concerning the suspension of death sentences passed by military courts for political reasons
384 (V). Intervention of the Central People's Government of the People's Republic of China in Korea	52	5	1		To constitute a group of three persons, including the President, to determine the basis for a cease-fire in Korea and to make recommendations to the General Assembly (third paragraph).
428 (V). Intervention of the Central People's Government of the People's Republic of China in Korea	44	7	9		To designate two persons to meet with the President and to use their good offices to bring about a cessation of hostilities in Korea (para. 7).
610 (VII). Korea: reports of the United Nations Commission for the Unification and Rehabilitation of Korea	54	5	1		To communicate proposals concerning the release and repatriation of prisoners of war to the Central People's Government of the People's Republic of China and to the North Korean authorities and to report to the General Assembly (para. 5).
705 (VII). The Korean question	Unanimity				To reconvene the session to resume consideration of the Korean question (a) upon notification by the Unified Command to the Security Council of the signing of an armistice agreement in Korea; or (b) when, in the view of a majority of Members, other developments in Korea would require consideration of this item.

d/ The result of the vote was recorded as follows: "The resolution was adopted". (G A (IV), Plen., 268th mtg., p. 522).

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
716 (VIII). The Korean question	55	0 5	To reconvene the eighth regular session of the General Assembly with the concurrence of the majority of Members of the United Nations if, in his opinion, developments in respect of the Korean question would warrant such reconvening, or one or more Members would make such a request to the President (para. 2).
5. Provisions bearing upon the future discharge of responsibilities concerning the maintenance of international peace and security			
377 A (V). Uniting for peace	52	5 2	Resolving that if the Security Council, because of the lack of unanimity of the permanent members, failed to exercise its primary responsibility for the maintenance of international peace and security in any case where there appeared to be a threat to the peace, or breach of the peace, it "shall consider" the matter immediately with a view to recommending collective measures including the use of armed force in the case of a threat to or a breach of the peace (para. 1); inviting each Member of the United Nations to survey its resources in order to determine the nature and scope of its assistance in support of recommendations of the Security Council or of the General Assembly for the restoration of international peace and security (para. 7); recommending that each Member of the United Nations maintain within its forces elements to be available as a United Nations unit or units upon recommendation by the Security Council or the General Assembly (para. 8).

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
377 B (V). Uniting for peace	52	5	2
503 A (VI). Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter	51	5	3
114 (II). Relations of Members of the United Nations with Spain	36	5	12
288 A (IV). Threats to the political independence and territorial integrity of Greece	50	6	2

6. Other provisions bearing upon the maintenance of international peace and security

- Recommending to the Security Council to take the necessary steps to ensure that the action provided for under the Charter was taken with respect to threats to the peace, breaches of the peace or acts of aggression and with respect to the peaceful settlement of disputes or situations likely to endanger the maintenance of international peace and security (operative part, para. 1); recommending further to the Security Council to devise measures for the earliest application of Articles 43, 45, 46 and 47 of the Charter (operative part, para. 2).
- Recommending to Members of the United Nations belonging to other international bodies, or parties to international arrangements concluded in accordance with the Charter to seek to obtain, in and through those bodies or arrangements, support for collective measures undertaken by the United Nations (para. 6); inviting States not Members of the United Nations to consider ways and means whereby they could contribute to collective measures undertaken by the United Nations (para. 7).
- Expressing confidence that the Security Council would exercise its responsibilities under the Charter as soon as it considered that the situation in regard to Spain so required (second paragraph).
- Recommending to all Members of the United Nations and to all other States to take into account, in their relations with Albania and Bulgaria, the extent to which they would abide by the recommendations of the General Assembly in their relations with Greece (para. 4 (c)).

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
290 (IV). Essentials of peace	53	5	1
291 (IV). Promotion of the stability of international relations in the Far East	45	5	0
376 (V). The problem of the independence of Korea	47	5	7

Calling upon every nation to refrain from threatening or using force contrary to the Charter; to refrain from any threats or acts aimed at impairing the freedom, independence or integrity of any State, or at fomenting civil strife; to settle international disputes by peaceful means (paras. 2, 3 and 11).

Calling upon all States (i) to respect the political independence of China and to be guided by the principles of the United Nations in their relations with China; (ii) to respect the right of the people of China to choose freely their political institutions and to maintain a government independent of foreign control; to respect existing treaties relating to China (paras. 1, 2 and 3).

Recommending that all appropriate steps be taken to ensure conditions of stability throughout Korea; all constituent acts be taken for the establishment of a unified, independent and democratic government in the sovereign State of Korea; all sections and representative bodies of the population of Korea, South and North, be invited to co-operate with the organs of the United Nations in the restoration of peace, in the holding of elections and in the establishment of a unified government; United Nations forces should not remain in any part of Korea otherwise than so far as necessary for achieving the above objectives; all necessary measures be taken to accomplish the economic rehabilitation of Korea (para. 1 (a-e)).

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
377 A (V), section E: Uniting for peace	52	5	2
380 (V). Peace through deeds	50	5	1
385 B (V). Threats to the political independence and territorial integrity of China and to the peace of the Far East, resulting from Soviet violations of the Sino-Soviet Treaty of Friendship and Alliance of 14 August 1945 and from Soviet violations of the Charter of the United Nations	39	6	14
386 (V). Relations of States Members and specialized agencies with Spain	38	10	12

Urging Member States to develop universal respect for an observance of human rights and fundamental freedoms and to intensify efforts to achieve conditions of economic stability and social progress, particularly through the development of under-developed countries and areas (para. 15).

Reaffirming that any aggression, whether committed openly, or by fomenting civil strife in the interest of a foreign Power, was the gravest of all crimes against peace and security; determining that for the realization of lasting peace and security it was indispensable to take prompt united action to meet aggression (paras. 1 and 2 (1)).

Deciding to draw the attention of all States to the necessity of complying with the recommendations contained in resolution 291 (IV), recommending, *inter alia*, the principle of observance of the treaties the purpose of which was to secure the independence and territorial integrity of China.

Resolving to revoke the recommendation for the withdrawal of Ambassadors and Ministers from Madrid contained in resolution 59 (I); and to revoke the recommendation in the same resolution intended to debar Spain from membership in international agencies established by or brought into relationship with the United Nations (paras. 1 and 2).

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against Abstentions</u>	
505 (VI). Threats to the political independence and territorial integrity of China and to the peace of the Far East, resulting from Soviet violations of the Sino-Soviet Treaty of Friendship and Alliance of 14 August 1945 and from Soviet violations of the Charter of the United Nations	25	9 24	Determining that the Union of Soviet Socialist Republics, in its relations with China since the surrender of Japan, had failed to carry out the Treaty of Friendship and Alliance between China and the Soviet Union of 14 August 1945 (fourth paragraph).
507 (VI). The problem of the independence of Korea: report of the United Nations Commission for the Unification and Rehabilitation of Korea	51	5 2	Deciding that: (a) upon notification by the Unified Command to the Security Council of the conclusion of an armistice in Korea, the Secretary-General should convene a special session of the General Assembly to consider the item; (b) when other developments in Korea would make desirable consideration of the item the Secretary-General should convene a special session or an emergency special session of the General Assembly.
610 (VII). Korea: reports of the United Nations Commission for the Unification and Rehabilitation of Korea	54	5 1	Affirming that the release and repatriation of prisoners of war should be effected in accordance with the Geneva Convention of 1949 and that force should not be used against them to prevent or effect their return to their homelands; and requesting the President of the General Assembly to communicate its proposals for the facilitation of the return to their homelands of all prisoners of war to the Central People's Government of the People's Republic of China and to the North Korean authorities (paras. 1-3).

<u>Number and title of resolution</u>	<u>Vote</u>		<u>Précis of the provisions</u>
	<u>For</u>	<u>Against</u>	
712 (VII). Tribute to the armed forces who have fought in Korea to resist aggression and uphold the cause of freedom and peace	53	5	0
			Paying tribute to the armed forces who had fought in Korea to resist aggression and expressing the satisfaction of the General Assembly that the first efforts pursuant to the call of the United Nations to repel armed aggression by collective military measures had been successful (paras. 2 and 3).

ANNEX III

**TABULATION OF THE DECISIONS OF THE GENERAL ASSEMBLY WITH RESPECT
TO DISARMAMENT AND THE REGULATION OF ARMAMENTS ^{e/}**

<u>Agenda item</u>	<u>Proposal</u>	<u>Meeting and date</u>	<u>Vote For Against Abstentions</u>	<u>Result of vote f/</u>
FIRST SESSION				
Establishment of a commission to deal with the problems raised by the discovery of atomic energy and other related matters: Draft resolution presented by the delegations of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, France, China and Canada	Draft resolution recommended by the First Committee (identical with the six-Power draft resolution). (G A (I/1), Plen., 17th mtg., pp. 258 and 259, A/12)	17th mtg., 24 Jan. 1946	Unanimity	Resolution 1 (I)
General reduction of armaments (proposal of the delegation of the Union of Soviet Socialist Republics)	Draft resolution recommended by the First Committee (A.267)	62nd mtg., 14 Dec. 1945	Unanimity	Resolution 41 (I): "Principles governing the general regulation and reduction of armaments"
Presence of troops of States Members of the United Nations on non-enemy territories (item proposed by the Union of Soviet Socialist Republics)	Draft resolution recommended by the First Committee (G A (I/2), Plen., pp. 1506 and 1507, annex 49 b (A.269))	63rd mtg., 14 Dec. 1945	36 5 4	Resolution 42 (I): "Information on Armed Forces to be supplied by Members of the United Nations"

^{e/} This list includes all the decisions relating to disarmament and the regulation of armaments except those on certain procedural matters. As indicated in the text, only rarely did the General Assembly make specific reference to Article 11 (1).

^{f/} Titles of resolutions are indicated when their language differs substantially from that of the corresponding agenda items.

<u>Agenda item</u>	<u>Proposal</u>	<u>Meeting and date</u>	<u>Vote For</u>	<u>Against</u>	<u>Abstentions</u>	<u>Result of vote</u>
	THIRD SESSION					
Reports of the Atomic Energy Commission: resolution of the Security Council	Draft resolution submitted by USSR (G A (III/1), 1st Com., Annexes, p. 19, A/C.1, 310)	157th mtg., 4 Nov. 1948	6	40	5	Rejected
	Amendments submitted by India to the draft resolution recommended by the First Committee (G A (III/1), Plen., 156th mtg., pp. 422-424, A/700)	"				
	first paragraph second paragraph		9	15	26	Rejected
	Resolution recommended by the First Committee (G A (III/1), Plen., Annexes, pp. 274 and 275, A/690, para. 9)	"	5	31	15	Rejected
			40	6	4	Resolution 191 (III)
Prohibition of the atomic weapon and reduction by one-third of the armaments and armed forces of the permanent members of the Security Council - United States of America, United Kingdom, Union of Soviet Socialist Republics, France and China: Item proposed by the Union of Soviet Socialist Republics	Draft resolution recommended by the First Committee (G A (III/1), Plen., Annexes, pp. 371 and 372, A/722 and Corr.1, para. 11)	163rd mtg., 19 Nov. 1948	43	6	1	Resolution 192 (III)
	Draft resolution submitted by USSR (G A (III/1), Plen., Annexes, p. 572, A/723)	"	6	39	6	Rejected
	Draft resolution submitted by Poland (G A (III/1), Plen., Annexes, pp. 398 and 399, A/732)	"	6	33	5	Rejected

<u>Agenda item</u>	<u>Proposal</u>	<u>Meeting and date</u>	<u>Vote For Against Abstentions</u>	<u>Result of vote</u>
FOURTH SESSION				
International control of atomic energy: resolutions of the Atomic Energy Commission (transmitted by the Security Council) and report of the permanent members of the Atomic Energy Commission	Draft resolution recommended by the Ad Hoc Political Committee (G A (IV), Plen., Annex, p. 74, A/1119) Draft resolution submitted by USSR (G A (IV), Plen., Annex, p. 74, A/1120) paragraph 1 paragraph 2 paragraph 3	254th mtg., 23 Nov. 1949	49 5 3 5 50 1 5 51 1 6 41 10	Resolution 299 (IV) Rejected Rejected Rejected
Condemnation of the preparations for a new war, and conclusion of a five-Power pact for the strengthening of peace	Draft resolution recommended by the First Committee (G A (IV), Plen., Annex, p. 252, A/1150)	261st mtg., 1 Dec. 1949	53 5 1	Resolution 290 (IV): "Essentials of peace"
	Draft resolution submitted by USSR (A/1149, same as text G A (IV), General Com., pp. 15-16, A/996)		vote in parts	Rejected
Prohibition of the atomic weapon and reduction by one-third of the armaments and armed forces of the permanent members of the Security Council: report of the Security Council	Title of the draft resolution recommended by the Ad Hoc Political Committee	268th mtg., 5 Dec. 1949	40 5 8	Adopted
	Draft resolution recommended by the Ad Hoc Political Committee (G A (IV), Plen., Annex, pp. 75-76, A/1151)		44 5 5	Resolution 300 (IV): "Regulation and reduction of conventional armaments and armed forces"

<u>Agenda item</u>	<u>Proposal</u>	<u>Meeting and date</u>	<u>Vote</u>		<u>Result of vote</u>
			<u>For</u>	<u>Against Abstentions</u>	
	Draft resolution submitted by USSR (G A (IV), Plen., 268th mtg., A/1169, para. 52)		6	39	9 Rejected
	FIFTH SESSION				
Declaration on the removal of the threat of a new war and the strengthening of peace and security among the nations	Amendments to draft resolution A recommended by the First Committee, submitted by Byelorussian SSR, Czechoslovakia, Poland, Ukrainian SSR and USSR (G A (V), Annexes, a.i. 69, pp. 7-8, A/1505)	308th mtg., 17 Nov. 1950		vote in parts	Rejected
	Draft resolution A recommended by the First Committee (G A (V), Annexes, a.i. 69, p. 7, A/1490)		50	5	1 Resolution 380 (V): "Peace through deeds"
	Draft resolution submitted by USSR (A/1491, same text as G A (V), Annexes, a.i. 69, p. 2, A/C.1/595)				
	preamble		5	31	15 Rejected
	paragraph 1		5	34	11 Rejected
	paragraph 2		5	35	11 Rejected
	paragraph 5		5	35	11 Rejected
International control of atomic energy	Draft resolution submitted by Australia, Canada, Ecuador, France, Netherlands, Turkey, United Kingdom and United States (A/1668 and Corr.1)	323rd mtg., 13 Dec. 1950	47	5	3 Resolution 496 (V)

<u>Agenda item</u>	<u>Proposal</u>	<u>Meeting and date</u>	<u>Vote</u>		<u>Result of vote</u>
			<u>For</u>	<u>Against Abstentions</u>	
	Draft resolution submitted by USSR (G A (V), Plen., 321st mtg., A/1676, para. 147)		5	32 16	Rejected
	SIXTH SESSION				
	Amendments submitted by Czechoslovakia to the draft resolution recommended by the First Committee (G A (VI), Plen., 358th mtg., A/2055, paras. 24-26)	358th mtg., 11 Jan. 1952			
	first amendment		5	42	Rejected
	second amendment		5	42	Rejected
	third amendment		6	41	Rejected
	Draft resolution recommended by the First Committee (G A (VI), Annexes, a.i. 66 and 16, pp. 18-19, A/2025)				
	paragraph 3 (c) as a whole		32 42	5 5	Adopted Resolution 502 (VI)
	Draft resolution recommended by the First Committee (G A (VI), Annexes, a.i. 67, p. 4, A/2067)	363rd mtg., 19 Jan. 1952	40	5 3	Resolution 504 (VI)
	Draft resolution submitted by USSR (A/2068, same text as G A (VI), Annexes, a.i. 67, pp. 2-3, A/G.1/698)		vote in parts		Rejected g/
	Regulation, limitation and balanced reduction of all armed forces and all armaments				
	and				
	International control of atomic energy: report of the Committee of Twelve				
	Measures to combat the threat of a new world war and to strengthen peace and friendship among the nations				
	g/ Paragraphs 3 to 7 of the draft resolution submitted by USSR had been referred to the Disarmament Commission by resolution 504 (VI). Only the remainder of the draft resolution was voted on and rejected.				

<u>Agenda item</u>	<u>Proposal</u>	<u>Meeting and date</u>	<u>Vote For Against Abstentions</u>	<u>Result of vote</u>
SEVENTH SESSION				
Regulation, limitation and balanced reduction of all armed forces and all armaments: report of the Disarmament Commission	USSR amendments to draft resolution recommended by the First Committee (G A (VII), Plen., 424th mtg., A/L.149, para. 8) first amendment second amendment	424th mtg., 8 Apr. 1953	no objection 10 35 13	Adopted Rejected
	Draft resolution recommended by the First Committee (G A (VII), Annexes, a.i. 17, p. 4, A/2575) as amended		52 5 4/ 3	Resolution 704 (VII)
EIGHTH SESSION				
Question of impartial investigation of charges of use by United Nations forces of bacterial warfare	Draft resolution recommended by the First Committee (G A (VIII), Annexes, a.i. 24, p. 15, A/2535)	456th mtg., 5 Nov. 1953	47 0 12	Resolution 714 (VIII)
Regulation, limitation and balanced reduction of all armed forces and all armaments: report of the Disarmament Commission	USSR amendments to draft resolution recommended by the First Committee (A/L.167, same text as G A (VIII), Annexes, a.i. 25, p. 7, A/C.1/L.75/Rev.3) first amendment second amendment third amendment fourth amendment	460th mtg., 28 Nov. 1953	8 36 14 8 39 13 5 37 14 5 39 11	Rejected Rejected Rejected Rejected

h/ In paragraph-by-paragraph vote, all paragraphs except paragraph 2 were adopted with no votes against. The first part of paragraph 2, reaffirming General Assembly resolution 502 (VI) was adopted by 38 votes to 6, with 16 abstentions, and the remainder by 57 votes to none, with 2 abstentions.

<u>Agenda item</u>	<u>Proposal</u>	<u>Meeting and date</u>	<u>Vote</u> <u>For Against Abstentions</u>	<u>Result of vote</u>
	Draft resolution recommended by the First Committee (G A (VIII)), Annexes, a.i. 23, p. 11, A/2562		54 0 5	Resolution 715 (VIII)
Measures to avert the threat of a new world war and to reduce tension in international relations	Draft resolution submitted by USSR (A/L.168, same text as G A (VIII), Annexes, a.i. 73, pp. 1-2, A/2485/Rev.1)	461st mtg. 30 Nov. 1953	vote in parts	Rejected <u>i/</u>
NINTH SESSION				
Regulation, limitation and balanced reduction of all armed forces and all armaments: report of the Disarmament Commission	Draft resolutions recommended by the First Committee (A/2779) draft resolution A draft resolution B draft resolution C	497th mtg., 4 Nov. 1954	unanimity 57 1 0 56 0 2	Resolution 808 A (IX) Resolution 808 B (IX) Resolution 808 C (IX)
<u>and</u>				
Conclusion of an international convention (treaty) on the reduction of armaments and the prohibition of atomic, hydrogen and other weapons of mass destruction				

i/ In paragraph-by-paragraph vote, all paragraphs except the first paragraph of the preamble were rejected. The draft resolution was, therefore, declared rejected.

ANNEX IV

Resolutions of the General Assembly treated in
the Analytical Summary of PracticeResolution 39 (I). Relations of Members of the United Nations with Spain

[Adopted by the General Assembly at its 59th plenary meeting on 12 December 1946,
by 34 votes in favour, 6 against, with 3 abstentions.]

The peoples of the United Nations, at San Francisco, Potsdam and London, condemned the Franco régime in Spain and decided that, as long as that régime remains, Spain may not be admitted to the United Nations.

The General Assembly, in its resolution of 9 February 1946, recommended that the Members of the United Nations should act in accordance with the letter and the spirit of the declarations of San Francisco and Potsdam.

The peoples of the United Nations assure the Spanish people of their enduring sympathy and of the cordial welcome awaiting them when circumstances enable them to be admitted to the United Nations.

The General Assembly recalls that, in May and June 1946, the Security Council conducted an investigation of the possible further action to be taken by the United Nations. The Sub-Committee of the Security Council charged with the investigation found unanimously:

"(a) In origin, nature, structure and general conduct, the Franco régime is a fascist régime patterned on, and established largely as a result of aid received from, Hitler's Nazi Germany and Mussolini's Fascist Italy.

"(b) During the long struggle of the United Nations against Hitler and Mussolini, Franco, despite continued Allied protests, gave very substantial aid to the enemy Powers. First, for example, from 1941 to 1945, the Blue Infantry Division, the Spanish Legion of Volunteers and the Salvador Air Squadron fought against Soviet Russia on the Eastern front. Second, in the summer of 1940, Spain seized Tangier in breach of international statute, and as a result of Spain maintaining a large army in Spanish Morocco large numbers of Allied troops were immobilized in North Africa.

"(c) Incontrovertible documentary evidence establishes that Franco was a guilty party with Hitler and Mussolini in the conspiracy to wage war against those countries which eventually in the course of the world war became banded together as the United Nations. It was part of the conspiracy that Franco's full belligerency should be postponed until a time to be mutually agreed upon."

The General Assembly,

Convinced that the Franco Fascist Government of Spain, which was imposed by force upon the Spanish people with the aid of the Axis Powers and which gave material assistance to the Axis Powers in the war, does not represent the Spanish people, and by its continued control of Spain is making impossible the participation of the Spanish people with the peoples of the United Nations in international affairs;

Recommends that the Franco Government of Spain be debarred from membership in international agencies established by or brought into relationship with the United Nations, and from participation in conferences or other activities which may be arranged by the United Nations or by these agencies, until a new and acceptable government is formed in Spain.

The General Assembly,

Further, desiring to secure the participation of all peace-loving peoples, including the people of Spain, in the community of nations.

Recommends that if, within a reasonable time, there is not established a government which derives its authority from the consent of the governed, committed to respect freedom of speech, religion and assembly and to the prompt holding of an election in which the Spanish people, free from force and intimidation and regardless of party, may express their will, the Security Council consider the adequate measures to be taken in order to remedy the situation;

Recommends that all Members of the United Nations immediately recall from Madrid their Ambassadors and Ministers plenipotentiary accredited there.

The General Assembly further recommends that the States Members of the Organization report to the Secretary-General and to the next session of the Assembly what action they have taken in accordance with this recommendation.

Resolution 111 (II). Establishment of an Interim Committee of the General Assembly

Adopted by the General Assembly at its 111th plenary meeting on 13 November 1947,
by 41 votes in favour, 6 against, with 6 abstentions.

The General Assembly,

Conscious of the responsibility specifically conferred upon it by the Charter in relation to matters concerning the maintenance of international peace and security (Articles 11 and 35), the promotion of international co-operation in the political field (Article 13) and the peaceful adjustment of any situations likely to impair the general welfare or friendly relations among nations (Article 14);

Deeming it necessary for the effective performance of these duties to establish an interim committee to consider such matters during the period between the closing of the present session and the opening of the next regular session of the General Assembly, and report with its conclusions to the General Assembly;

Recognizing fully the primary responsibility of the Security Council for prompt and effective action for the maintenance of international peace and security (Article 24),

Resolves that

1. There shall be established, for the period between the closing of the present session and the opening of the next regular session of the General Assembly, an Interim Committee on which each Member of the General Assembly shall have the right to appoint one representative;

2. The Interim Committee, as a subsidiary organ of the General Assembly established in accordance with Article 22 of the Charter, shall assist the General Assembly in the performance of its functions by discharging the following duties:

(a) To consider and report, with its conclusions, to the General Assembly on such matters as have been referred to it by the General Assembly;

(b) To consider and report with its conclusions to the General Assembly on any dispute or any situation which, in virtue of Articles 11 (paragraph 2), 14 or 35 of the Charter, has been proposed for inclusion in the agenda of the General Assembly by any Member of the United Nations or brought before the General Assembly by the Security Council, provided the Committee previously determines the matter to be both important and requiring preliminary study. Such determination shall be made by a majority of two-thirds of the members present and voting, unless the matter is one referred by the Security Council under Article 11 (paragraph 2), in which case a simple majority will suffice;

(c) To consider, as it deems useful and advisable, and report with its conclusions to the General Assembly on methods to be adopted to give effect to that part of Article 11 (paragraph 1), which deals with the general principle of co-operation in the maintenance of international peace and security, and to that part of Article 13 (paragraph 1 a), which deals with the promotion of international co-operation in the political field;

(d) To consider, in connexion with any matter under discussion by the Interim Committee, whether occasion may require the summoning of a special session of the General Assembly and, if it deems that such session is required, so to advise the Secretary-General in order that he may obtain the views of the Members of the United Nations thereon;

(e) To conduct investigations and appoint commissions of enquiry within the scope of its duties, as it may deem useful and necessary, provided that decisions to conduct such investigations or enquiries shall be made by a two-thirds majority of the members present and voting. An investigation or enquiry elsewhere than at the headquarters of the United Nations shall not be conducted without the consent of the State or States in whose territory it is to take place;

(f) To report to the next regular session of the General Assembly on the advisability of establishing a permanent committee of the General Assembly to perform the duties of the Interim Committee as stated above with any changes considered desirable in the light of experience;

3. In discharging its duties the Interim Committee shall at all times take into account the responsibilities of the Security Council under the Charter for the maintenance of international peace and security as well as the duties assigned by the Charter or by the General Assembly or by the Security Council to other Councils or to any committee or commission. The Interim Committee shall not consider any matter of which the Security Council is seized;

4. Subject to paragraphs 2 (b) and 2 (e) above, the rules of procedure of the General Assembly shall, so far as they are applicable, govern the proceedings of the Interim Committee and such sub-committees and commissions as it may set up. The Interim Committee shall, however, have authority to adopt such additional rules as it may deem necessary provided that they are not inconsistent with any of the rules of procedure of the General Assembly. The Interim Committee shall be convened by the Secretary-General not later than six weeks following the close of the second regular session of the General Assembly. It shall meet as and when it deems necessary for the conduct of its business.

5. The Secretary-General shall provide the necessary facilities and assign appropriate staff as required for the work of the Interim Committee, its sub-committees and commissions.

Resolution 196 (III). Re-establishment of the Interim Committee of the General Assembly

Adopted by the General Assembly at its 169th plenary meeting on 3 December 1948, by 40 votes in favour, 6 against, with 1 abstention.

The General Assembly,

Having taken note of the report submitted to it by the Interim Committee on the advisability of establishing a permanent committee of the General Assembly (A/606),

Affirming that, for the effective performance of the duties specifically conferred upon the General Assembly by the Charter in relation to matters concerning the maintenance of international peace and security (Articles 11 and 35), the promotion of international co-operation in the political field (Article 13), and the peaceful adjustment of any situation likely to impair the general welfare or friendly relations among nations (Article 14), it is necessary to continue the Interim Committee for the purpose of considering such matters further and reporting with conclusions to the General Assembly,

Recognizing fully the primary responsibility of the Security Council for prompt and effective action for the maintenance of international peace and security (Article 24),

Resolves that

1. There shall be re-established for the period between the closing of the present session and the opening of the next regular session of the General Assembly an Interim Committee on which each Member of the General Assembly shall have the right to appoint one representative;

2. The Interim Committee, as a subsidiary organ of the General Assembly established in accordance with Article 22 of the Charter, shall assist the General Assembly in the performance of its functions by discharging the following duties:

(a) To consider and report with conclusions to the General Assembly on such matters as may be referred to the Committee by or under the authority of the General Assembly;

(b) To consider and report with conclusions to the General Assembly on any dispute or any situation which, in virtue of Articles 11 (paragraph 2), 14 or 35 of the Charter, has been proposed for inclusion in the agenda of the General Assembly by any Member of the United Nations, or by any non-member State under Articles 11 (paragraph 2) or 35, or has been brought before the General Assembly by the Security Council, provided the Committee previously determines the matter to be both important and requiring preliminary study. Such determination shall be made by a majority of two-thirds of the members present and voting, unless the matter is one referred to the General Assembly by the Security Council, in which case a simple majority will suffice;

(c) To consider systematically, using as a starting point the recommendations and studies of the Interim Committee contained in document A/605, the further implementation of that part of Article 11 (paragraph 1) relating to the general principles of co-operation in the maintenance of international peace and security, and

of that part of Article 13 (paragraph 1 a) which deals with the promotion of international co-operation in the political field, and to report with conclusions to the General Assembly;

(d) To consider, in connexion with any matter under discussion by the Interim Committee, whether occasion may require the summoning of a special session of the General Assembly and, if the Committee deems that a session is required, so to advise the Secretary-General in order that he may obtain the views of the Members of the United Nations thereon;

(e) To conduct investigations and appoint commissions of inquiry within the scope of the Committee's duties, as it may deem useful and necessary, provided that decisions to conduct such investigations or inquiries shall be made by a two-thirds majority of the members present and voting. An investigation or inquiry elsewhere than at the headquarters of the United Nations shall not be conducted without the consent of the State or States in whose territory it is to take place;

(f) To report to the next regular session of the General Assembly on any changes in the Committee's constitution, its duration or its terms of reference which may be considered desirable in the light of experience;

3. The Interim Committee is hereby authorized to request advisory opinions of the International Court of Justice on legal questions arising within the scope of the Committee's activities;

4. In discharging its duties, the Interim Committee shall at all times take into account the responsibilities of the Security Council under the Charter for the maintenance of international peace and security as well as the duties assigned by the Charter or by the General Assembly or by the Security Council to other Councils or to any committee or commission. The Interim Committee shall not consider any matter of which the Security Council is seized and which the latter has not submitted to the General Assembly;

5. The rules of procedure governing the proceedings of the Interim Committee and such sub-committees and commissions as it may set up shall be those adopted by the Interim Committee on 9 January 1948 with such changes and additions as the Interim Committee may deem necessary, provided that they are not inconsistent with any provision of the present resolution or with any applicable rule of procedure of the General Assembly. The Interim Committee shall be convened by the Secretary-General, in consultation with the Chairman elected during the previous session of the Committee or the head of his delegation, to meet at the headquarters of the United Nations not later than 31 January 1949. At the opening meeting, the Chairman elected during the previous session of the Committee, or the head of his delegation, shall preside until the Interim Committee has elected a Chairman. The Interim Committee shall meet as and when it deems necessary for the conduct of its business. No new credentials shall be required for representatives who were duly accredited to the Interim Committee during its previous session;

6. The Secretary-General shall provide the necessary facilities and assign appropriate staff as required for the work of the Interim Committee, its sub-committees and commissions.

Resolution 295 (IV). Re-establishment of the Interim Committee of the General Assembly

[Adopted by the General Assembly at its 250th plenary meeting on 21 November 1949, by 45 votes in favour, 5 against, with 4 abstentions.]

The General Assembly,

Having taken note of the report submitted to it by the Interim Committee of the General Assembly on the changes in the Committee's constitution, its duration or its terms of reference which are considered desirable in the light of experience,

Affirming that, for the effective performance of the duties specifically conferred upon the General Assembly by the Charter in relation to matters concerning the maintenance of international peace and security (Articles 11 and 35), the promotion of international co-operation in the political field (Article 13), and the peaceful adjustment of any situation likely to impair the general welfare or friendly relations among nations (Article 14), it is necessary to continue the Interim Committee for the purpose of considering such matters and reporting with conclusions to the General Assembly,

Recognizing fully the primary responsibility of the Security Council for prompt and effective action for the maintenance of international peace and security (Article 24),

• Resolves that:

1. There shall be re-established an Interim Committee of the General Assembly, to meet when the General Assembly is not actually in regular session, on which each Member of the General Assembly shall have the right to appoint one representative;

2. The Interim Committee, as a subsidiary organ of the General Assembly established in accordance with Article 22 of the Charter, shall assist the General Assembly in the performance of its functions by discharging the following duties:

(a) To consider and report with conclusions to the General Assembly on such matters as may be referred to the Committee by or under the authority of the General Assembly;

(b) To consider and report with conclusions to the General Assembly on any dispute or any situation which, in virtue of Articles 11 (paragraph 2), 14 or 35 of the Charter, has been proposed for inclusion in the agenda of the General Assembly by any Member of the United Nations, or by any non-member State under Articles 11 (paragraph 2) or 35, or has been brought before the General Assembly by the Security Council, provided the Committee previously determines the matter to be both important and requiring preliminary study. Such determination shall be made by a majority of two-thirds of the members present and voting, unless the matter is one referred to the General Assembly by the Security Council, in which case a simple majority will suffice;

(c) To consider systematically, using the recommendations and studies of the Interim Committee contained in documents A/605 and A/AC.18/91, the further implementation of that part of Article 11 (paragraph 1) relating to the general principles of co-operation in the maintenance of international peace and security, and of that part of Article 13 (paragraph 1 a) which deals with the promotion of international co-operation in the political field, and to report with conclusions to the General Assembly;

(d) To consider, in connexion with any matter under discussion by the Interim Committee, whether occasion may require the summoning of a special session of the General Assembly and, if the Committee deems that a session is required, so to advise

the Secretary-General in order that he may obtain the views of the Members of the United Nations thereon;

(e) To conduct investigations and appoint commissions of inquiry within the scope of the Committee's duties, as it may deem useful and necessary, provided that decisions to conduct such investigations or inquiries shall be made by a two-thirds majority of the members present and voting. An investigation or inquiry elsewhere than at the Headquarters of the United Nations shall not be conducted without the consent of the State or States in whose territory it is to take place;

(f) To report to the General Assembly, should the occasion arise, on any changes in the Committee's constitution or its terms of reference which may be considered desirable in the light of experience;

3. The Interim Committee is authorized to request advisory opinions of the International Court of Justice on legal questions arising within the scope of the Committee's activities;

4. In discharging its duties, the Interim Committee shall at all times take into account the responsibilities of the Security Council under the Charter for the maintenance of international peace and security as well as the duties assigned by the Charter or by the General Assembly or by the Security Council to other Councils or to any committee or commission. The Interim Committee shall not consider any matter of which the Security Council is seized and which the latter has not submitted to the General Assembly;

5. The rules of procedure governing the proceedings of the Interim Committee and such sub-committees and commissions as it may set up shall be those adopted by the Interim Committee on 9 January 1948 as amended by the Interim Committee on 31 March 1949, with such changes and additions as the Interim Committee may deem necessary, provided that they are not inconsistent with any provisions of this resolution. The Interim Committee shall hold the first meeting of its annual session at the Headquarters of the United Nations within six weeks from the date of the conclusion or adjournment of any regular session of the General Assembly. The date of the first meeting of each session of the Interim Committee shall be determined by the Chairman elected during the previous session or by the head of his delegation, in consultation with the Secretary-General, who shall notify the members of the Committee accordingly. At the opening meeting, the Chairman elected during the previous session of the Committee or the head of his delegation shall preside until the Interim Committee has elected a Chairman. The Interim Committee shall meet as and when it deems necessary for the conduct of its business. No new credentials shall be required for representatives who were duly accredited to the Interim Committee during its previous session;

6. The Secretary-General shall provide the necessary facilities and assign appropriate staff as required for the work of the Interim Committee, its sub-committees and commissions.

Resolution 377 (V). Uniting for peace

Adopted by the General Assembly at its 302nd plenary meeting on 3 November 1950, by 52 votes in favour, 5 against, with 2 abstentions.

A

The General Assembly,

Recognizing that the first two stated Purposes of the United Nations are:

"To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace", and

"to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace",

Reaffirming that it remains the primary duty of all Members of the United Nations, when involved in an international dispute, to seek settlement of such a dispute by peaceful means through the procedures laid down in Chapter VI of the Charter, and recalling the successful achievements of the United Nations in this regard on a number of previous occasions,

Finding that international tension exists on a dangerous scale,

Recalling its resolution 290 (IV) entitled "Essentials of peace", which states that disregard of the Principles of the Charter of the United Nations is primarily responsible for the continuance of international tension, and desiring to contribute further to the objectives of that resolution,

Reaffirming the importance of the exercise by the Security Council of its primary responsibility for the maintenance of international peace and security, and the duty of the permanent members to seek unanimity and to exercise restraint in the use of the veto,

Reaffirming that the initiative in negotiating the agreements for armed forces provided for in Article 43 of the Charter belongs to the Security Council, and desiring to ensure that, pending the conclusion of such agreements, the United Nations has at its disposal means for maintaining international peace and security,

Conscious that failure of the Security Council to discharge its responsibilities on behalf of all the Member States, particularly those responsibilities referred to in the two preceding paragraphs, does not relieve Member States of their obligations or the United Nations of its responsibility under the Charter to maintain international peace and security,

Recognizing in particular that such failure does not deprive the General Assembly of its rights or relieve it of its responsibilities under the Charter in regard to the maintenance of international peace and security,

Recognizing that discharge by the General Assembly of its responsibilities in these respects calls for possibilities of observation which would ascertain the facts and expose aggressors, for the existence of armed forces which could be used collectively; and for the possibility of timely recommendation by the General Assembly to Members of the United Nations for collective action which, to be effective, should be prompt,

A

1. Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider

the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations;

2. Adopts for this purpose the amendments to its rules of procedure set forth in the annex to the present resolution,

B

3. Establishes a Peace Observation Commission which, for the calendar years 1951 and 1952, shall be composed of fourteen Members, namely: China, Colombia, Czechoslovakia, France, India, Iraq, Israel, New Zealand, Pakistan, Sweden, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Uruguay. and which could observe and report on the situation in any area where there exists international tension the continuance of which is likely to endanger the maintenance of international peace and security. Upon the invitation or with the consent of the State into whose territory the Commission would go, the General Assembly, or the Interim Committee when the Assembly is not in session, may utilize the Commission if the Security Council is not exercising the functions assigned to it by the Charter with respect to the matter in question. Decisions to utilize the Commission shall be made on the affirmative vote of two-thirds of the members present and voting. The Security Council may also utilize the Commission in accordance with its authority under the Charter;

4. Decides that the Commission shall have authority in its discretion to appoint sub-commissions and to utilize the services of observers to assist it in the performance of its functions;

5. Recommends to all governments and authorities that they co-operate with the Commission and assist it in the performance of its functions;

6. Requests the Secretary-General to provide the necessary staff and facilities, utilizing, where directed by the Commission, the United Nations Panel of Field Observers envisaged in General Assembly resolution 297 B (IV);

C

7. Invites each Member of the United Nations to survey its resources in order to determine the nature and scope of the assistance it may be in a position to render in support of any recommendations of the Security Council or of the General Assembly for the restoration of international peace and security;

8. Recommends to the States Members of the United Nations that each Member maintain within its national armed forces elements so trained, organized and equipped that they could promptly be made available, in accordance with its constitutional processes, for service as a United Nations unit or units, upon recommendation by the Security Council or the General Assembly, without prejudice to the use of such elements in exercise of the right of individual or collective self-defence recognized in Article 51 of the Charter;

9. Invites the Members of the United Nations to inform the Collective Measures Committee provided for in paragraph 11 as soon as possible of the measures taken in implementation of the preceding paragraph;

10. Requests the Secretary-General to appoint, with the approval of the Committee provided for in paragraph 11, a panel of military experts who could be made available, on request, to Member States wishing to obtain technical advice regarding the organization, training, and equipment for prompt service as United Nations units of the elements referred to in paragraph 8;

D

11. Establishes a Collective Measures Committee consisting of fourteen Members, namely: Australia, Belgium, Brazil, Burma, Canada, Egypt, France, Mexico, Philippines, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Venezuela and Yugoslavia, and directs the Committee, in consultation with the Secretary-General and with such Member States as the Committee finds appropriate, to study and make a report to the Security Council and the General Assembly, not later than 1 September 1951, on methods, including those in section C of the present resolution, which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter, taking account of collective self-defence and regional arrangements (Articles 51 and 52 of the Charter);

12. Recommends to all Member States that they co-operate with the Committee and assist it in the performance of its functions;

13. Requests the Secretary-General to furnish the staff and facilities necessary for the effective accomplishment of the purposes set forth in sections C and D of the present resolution;

E

14. Is fully conscious that, in adopting the proposals set forth above, enduring peace will not be secured solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends also upon the observance of all the Principles and Purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon respect for and observance of human rights and fundamental freedoms for all and on the establishment and maintenance of conditions of economic and social well-being in all countries; and accordingly

15. Urges Member States to respect fully, and to intensify, joint action, in co-operation with the United Nations, to develop and stimulate universal respect for and observance of human rights and fundamental freedoms, and to intensify individual and collective efforts to achieve conditions of economic stability and social progress, particularly through the development of under-developed countries and areas.

ANNEX

The rules of procedure of the General Assembly are amended in the following respects:

1. The present text of rule 8 shall become paragraph (a) of that rule, and a new paragraph (b) shall be added to read as follows:

"Emergency special sessions pursuant to resolution 377 A (V) shall be convened within twenty-four hours of the receipt by the Secretary-General of a request for such a session from the Security Council, on the vote of any seven members thereof, or of a request from a majority of the Members of the United Nations expressed by

vote in the Interim Committee or otherwise, or of the concurrence of a majority of Members as provided in rule 9."

2. The present text of rule 9 shall become paragraph (a) of that rule and a new paragraph (b) shall be added to read as follows:

"This rule shall apply also to a request by any Member for an emergency special session pursuant to resolution 377 A (V). In such a case the Secretary-General shall communicate with other Members by the most expeditious means of communication available."

3. Rule 10 is amended by adding at the end thereof the following:

"...In the case of an emergency special session convened pursuant to rule 8 (b), the Secretary-General shall notify the Members of the United Nations at least twelve hours in advance of the opening of the session."

4. Rule 16 is amended by adding at the end thereof the following:

"...The provisional agenda of an emergency special session shall be communicated to the Members of the United Nations simultaneously with the communication summoning the session."

5. Rule 19 is amended by adding at the end thereof the following:

"...During an emergency special session additional items concerning the matters dealt with in resolution 377 A (V) may be added to the agenda by a two-thirds majority of the Members present and voting."

6. There is added a new rule to precede rule 65 to read as follows:

"Notwithstanding the provisions of any other rule and unless the General Assembly decides otherwise, the Assembly, in case of an emergency special session, shall convene in plenary session only and proceed directly to consider the item proposed for consideration in the request for the holding of the session, without previous reference to the General Committee or to any other Committee; the President and Vice-Presidents for such emergency special sessions shall be, respectively, the Chairman of those delegations from which were elected the President and Vice-Presidents of the previous session."

B

For the purpose of maintaining international peace and security, in accordance with the Charter of the United Nations, and, in particular, with Chapters V, VI and VII of the Charter,

The General Assembly

Recommends to the Security Council:

That it should take the necessary steps to ensure that the action provided for under the Charter is taken with respect to threats to the peace, breaches of the peace or acts of aggression and with respect to the peaceful settlement of disputes or situations likely to endanger the maintenance of international peace and security;

That it should devise measures for the earliest application of Articles 43, 45, 46 and 47 of the Charter of the United Nations regarding the placing of armed forces at the disposal of the Security Council by the States Members of the United Nations and the effective functioning of the Military Staff Committee;

The above dispositions should in no manner prevent the General Assembly from fulfilling its functions under resolution 377 A (V).

C

The General Assembly,

Recognizing that the primary function of the United Nations Organization is to maintain and promote peace, security and justice among all nations,

Recognizing the responsibility of all Member States to promote the cause of international peace in accordance with their obligations as provided in the Charter,

Recognizing that the Charter charges the Security Council with the primary responsibility for maintaining international peace and security,

Reaffirming the importance of unanimity among the permanent members of the Security Council on all problems which are likely to threaten world peace,

Recalling General Assembly resolution 190 (III) entitled "Appeal to the Great Powers to renew their efforts to compose their differences and establish a lasting peace",

Recommends to the permanent members of the Security Council that:

(a) They meet and discuss, collectively or otherwise, and, if necessary, with other States concerned, all problems which are likely to threaten international peace and hamper the activities of the United Nations, with a view to their resolving fundamental differences and reaching agreement in accordance with the spirit and letter of the Charter;

(b) They advise the General Assembly and, when it is not in session, the Members of the United Nations, as soon as appropriate, of the results of their consultations.

Resolution 498 (V). Intervention of the Central People's Government of the People's Republic of China in Korea

Adopted by the General Assembly at its 327th plenary meeting on 1 February 1951, by 44 votes in favour, 7 against, with 9 abstentions.]

The General Assembly,

Noting that the Security Council, because of lack of unanimity of the permanent members, has failed to exercise its primary responsibility for the maintenance of international peace and security in regard to Chinese Communist intervention in Korea,

Noting that the Central People's Government of the People's Republic of China has not accepted United Nations proposals to bring about a cessation of hostilities in Korea with a view to peaceful settlement, and that its armed forces continue their invasion of Korea and their large-scale attacks upon United Nations forces there,

1. Finds that the Central People's Government of the People's Republic of China, by giving direct aid and assistance to those who were already committing aggression in Korea and by engaging in hostilities against United Nations forces there, has itself engaged in aggression in Korea;
2. Calls upon the Central People's Government of the People's Republic of China to cause its forces and nationals in Korea to cease hostilities against the United Nations forces and to withdraw from Korea;

3. Affirms the determination of the United Nations to continue its action in Korea to meet the aggression;
4. Calls upon all States and authorities to continue to lend every assistance to the United Nations action in Korea;
5. Calls upon all States and authorities to refrain from giving any assistance to the aggressors in Korea;
6. Requests a Committee composed of the members of the Collective Measures Committee as a matter of urgency to consider additional measures to be employed to meet this aggression and to report thereon to the General Assembly, it being understood that the Committee is authorized to defer its report if the Good Offices Committee referred to in the following paragraph reports satisfactory progress in its efforts;
7. Affirms that it continues to be the policy of the United Nations to bring about a cessation of hostilities in Korea and the achievement of United Nations objectives in Korea by peaceful means, and requests the President of the General Assembly to designate forthwith two persons who would meet with him at any suitable opportunity to use their good offices to this end.

Resolution 500 (V). Additional measures to be employed to meet the aggression in Korea

Adopted by the General Assembly at its 330th plenary meeting on 18 May 1951
by 47 votes in favour, none against, with 8 abstentions. j/

The General Assembly,

Noting the report of the Additional Measures Committee dated 14 May 1951,

Recalling its resolution 498 (V) of 1 February 1951,

Noting that:

- (a) The Additional Measures Committee established by that resolution has considered additional measures to be employed to meet the aggression in Korea,
- (b) The Additional Measures Committee has reported that a number of States have already taken measures designed to deny contributions to the military strength of the forces opposing the United Nations in Korea,
- (c) The Additional Measures Committee has also reported that certain economic measures designed further to deny such contributions would support and supplement the military action of the United Nations in Korea and would assist in putting an end to the aggression,

1. Recommends that every State:

- (a) Apply an embargo on the shipment to areas under the control of the Central People's Government of the People's Republic of China and of the North Korean authorities of arms, ammunition and implements of war, atomic energy materials, petroleum, transportation materials of strategic value, and items useful in the production of arms, ammunition and implements of war;

j/ The representatives of the Byelorussian SSR, Czechoslovakia, Poland, the Ukrainian SSR and the USSR did not participate in the vote.

- (b) Determine which commodities exported from its territory fall within the embargo, and apply controls to give effect to the embargo;
- (c) Prevent by all means within its jurisdiction the circumvention of controls on shipments applied by other States pursuant to the present resolution;
- (d) Co-operate with other States in carrying out the purposes of this embargo;
- (e) Report to the Additional Measures Committee, within thirty days and thereafter at the request of the Committee, on the measures taken in accordance with the present resolution;

2. Requests the Additional Measures Committee:

(a) To report to the General Assembly, with recommendations as appropriate, on the general effectiveness of the embargo and the desirability of continuing, extending or relaxing it;

(b) To continue its consideration of additional measures to be employed to meet the aggression in Korea, and to report thereon further to the General Assembly, it being understood that the Committee is authorized to defer its report if the Good Offices Committee reports satisfactory progress in its efforts,

3. Reaffirms that it continues to be the policy of the United Nations to bring about a cessation of hostilities in Korea, and the achievement of United Nations objectives in Korea by peaceful means, and requests the Good Offices Committee to continue its good offices.

Resolution 503 (VI). Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter

Adopted by the General Assembly at its 539th plenary meeting on 12 January 1952, resolution A adopted by 51 votes in favour, 5 against, with 3 abstentions; resolution B adopted by 57 votes to none, with 2 abstentions.

A

The General Assembly,

Reaffirming that it is one of the foremost Purposes of the United Nations to "take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace",

Recognizing that the establishment of an effective collective security system is in harmony with other United Nations Purposes and Principles as embodied in the Charter, in particular those relating to the pacific settlement of disputes, which must be fulfilled if an enduring peace is to be secured,

Reaffirming its desire, as expressed in its resolution 377 A (V) entitled "Uniting for peace", to ensure that the United Nations has at its disposal means for maintaining international peace and security pending the conclusion of agreements provided for in Article 43 of the Charter,

Recognizing that the ability and readiness of States to contribute armed forces and other assistance and facilities in support of United Nations collective action are essential to an effective security system,

Having received the report of the Collective Measures Committee rendered in accordance with paragraph 11 of resolution 377 A (V),

Noting the responses from Member States to its recommendation contained in that resolution that they maintain elements within their national armed forces which could be made available for United Nations service,

Convinced, moreover, that additional action should be taken by States and further study undertaken by the United Nations for the establishment of an effective system of collective security under the authority of the United Nations,

Recognizing that regional and collective self-defence arrangements concluded in accordance with the terms of the Charter can and should constitute an important contribution to the universal collective security system of the United Nations,

Recognizing that United Nations collective action, to be most effective, should be as nearly universal as possible and that in the event of need States not Members of the United Nations should unite their strength with that of the United Nations to maintain international peace and security in accordance with the Purposes and Principles of the Charter,

1. Takes note of the report of the Collective Measures Committee and of its conclusions and expresses its appreciation of the Committee's constructive work in the study of collective security;

2. Recommends to Member States that, in accordance with paragraph 8 of resolution 377 A (V), each take such further action as is necessary to maintain within its national armed forces elements so trained, organized and equipped that they could promptly be made available, in accordance with its constitutional processes and to the extent to which in its judgment its capacity permits it to do so, for service as a United Nations unit or units without prejudice to the use of such elements in exercise of the right of individual or collective self-defence recognized in Article 51 of the Charter and without prejudice likewise to internal security;

3. Recommends to Member States that they take such steps as are necessary to enable them, in accordance with their constitutional processes and to the extent to which in their judgment their capacity permits them to do so, to provide assistance and facilities to United Nations armed forces engaged in collective military measures undertaken by the Security Council or by the General Assembly;

4. Recommends to Member States that they determine, in the light of their existing legislation, the appropriate steps for carrying out promptly and effectively United Nations collective measures in accordance with their constitutional processes;

5. Recommends to Member States that they continue the survey of their resources provided for in paragraph 7 of resolution 377 A (V);

6. Recommends to Members of the United Nations which belong to other international bodies, or which are parties to international arrangements concluded in accordance with the Charter, that, in addition to their individual participation in the collective security system of the United Nations, they seek to obtain, when appropriate, in and through such bodies and arrangements within the constitutional limitations and the other provisions of those bodies and arrangements, all possible support for collective measures undertaken by the United Nations;

7. Invites States not Members of the United Nations to take note of the report of the Collective Measures Committee and consider ways and means, in the economic as well

as in other fields, whereby they could contribute most effectively to collective measures undertaken by the United Nations in accordance with the Purposes and Principles of the Charter;

8. Requests the Secretary-General to appoint as soon as possible the members of the panel of military experts provided for in paragraph 10 of resolution 377 A (V), to the end that they can be made available on request of States wishing to obtain technical advice regarding the training, organization and equipment of the United Nations units referred to in paragraph 2 above;

9. Directs the Collective Measures Committee, in consultation with the Secretary-General and with such States as the Committee finds appropriate, to continue for another year its studies on methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter, taking account of both regional and collective self-defence arrangements, and to report thereon to the Security Council and to the General Assembly before the seventh session of the General Assembly;

10. Recognizes that nothing in the present resolution shall be construed to permit any measures to be taken in any State without the free and express consent of that State.

B

The General Assembly,

Considering that a basic task of the United Nations is to secure and strengthen international peace and security, and bearing in mind that under the Charter the main responsibility for the maintenance of international peace and security has been conferred on the Security Council,

Recommends that the Security Council, in accordance with Article 28 of the Charter, should convene a periodic meeting to consider what measures might ensure the removal of the tension at present existing in international relations and the establishment of friendly relations between countries whenever such a meeting would usefully serve to remove such tension and establish such friendly relations in furtherance of the Purposes and Principles of the Charter.

Resolution 703 (VII). Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter: report of the Collective Measures Committee

[Adopted by the General Assembly at its 415th plenary meeting on 17 March 1953,
by 50 votes in favour, 5 against, with 3 abstentions.]

The General Assembly,

Having received the second report of the Collective Measures Committee,

Affirming the need for strengthening further the system of collective security under the authority of the United Nations,

Finding that to this end further steps could be taken by States and by the United Nations in accordance with the Charter and in conformity with the "Uniting for peace" resolution (377 A (V)) and with resolution 503 (VI),

1. Takes note of the second report of the Collective Measures Committee and expresses appreciation of the constructive work done by the Committee during the past year, particularly in the economic field, including the preparation of lists of arms, ammunition and implements of war and of strategic items for consideration by the Security Council or the General Assembly in the application of a selective embargo;

2. Requests the Collective Measures Committee to continue its work until the ninth session of the General Assembly, as directed in paragraph 4 below, for the maintenance and strengthening of the United Nations collective security system;

3. Recommends to States Members, and invites States not Members of the United Nations:

(a) To give careful consideration to the reports of the Collective Measures Committee;

(b) To continue and intensify their efforts to carry out the recommendations of the "Uniting for peace" resolution and of resolution 503 (VI);

(c) To keep the Collective Measures Committee currently informed of the progress they are making in this respect;

4. Directs the Collective Measures Committee:

(a) To pursue such studies as it may deem desirable to strengthen the capability of the United Nations to maintain peace, taking account of the "Uniting for peace" resolution, resolution 503 (VI) and the present resolution;

(b) To continue the examination of information received from States pursuant to the "Uniting for peace" resolution, resolution 503 (VI) and the present resolution;

(c) In the light of its studies, to suggest to the Security Council and to the General Assembly such specific ways and means as it may deem appropriate to encourage further preparatory action by States;

(d) To report to the Security Council and to the General Assembly not later than the ninth session of the Assembly.

ARTICLE 12

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TEXT OF ARTICLE 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

INTRODUCTORY NOTE

1. Article 12 delimits the powers of the General Assembly and of the Security Council, as regards the exercise of their respective competence to deal with disputes and situations and should be considered in connexion with Articles 10, 11 and 14, and the Articles of Chapters VI and VII of the Charter. 1/

2. Under Article 12 (1), the competence of the General Assembly is restricted with respect to making recommendations concerning disputes and situations with regard to which the Security Council "is exercising... the functions assigned to it" in the Charter.

3. This restriction of the competence of the General Assembly applies during the time the Security Council is dealing with the dispute or situation and does not impair the power of the General Assembly to make recommendations with respect to disputes or situations with which the Security Council has ceased to deal.

4. The restriction of the competence of the General Assembly to make recommendations is temporary; the Council may lift this restriction by requesting the General Assembly to make a recommendation, or by adopting a decision to the effect that it has ceased to deal with the matter.

5. Article 12 (2) prescribes the procedure by which the General Assembly is to be informed of the matters which are being dealt with by the Security Council or with which the Council has ceased to deal.

6. The main problems that have arisen in connexion with the application of this Article have been related to the scope of the term "recommendation", to the meaning of the phrase "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter" and its effect upon the powers of the General Assembly, and to the question of the requests of the Security Council to the General Assembly in accordance with the proviso of paragraph 1.

1/ See also in this Repertory under these Articles.

7. The question has also arisen whether a decision of the Security Council to remove an item from the list of matters of which the Council is seized may or may not be considered procedural within the meaning of Article 27 (2). This question is examined in this Repertory under Article 27.

I. GENERAL SURVEY

8. The following disputes or situations — or certain aspects thereof — have been considered by both the Security Council and the General Assembly: the Spanish question, the Indonesian question, the Greek frontier incidents question, the Palestine question, the complaint of aggression upon the Republic of Korea, the complaint of armed invasion of Taiwan (Formosa) and the complaint of bombing by air forces of the territory of China.

9. As regards the Tunisian question and the question of Morocco, which have been dealt with by the General Assembly, their inclusion in the agenda of the Security Council was requested, but was rejected.

10. As regards the Palestine question, which was originally submitted to the General Assembly by the United Kingdom on 3 April 1947, certain aspects thereof were referred to the Security Council by General Assembly resolution 181 (II). That resolution recommended to Members the adoption and implementation of a Plan of Partition with Economic Union and requested the Council to take the necessary measures provided for in the Plan for its implementation, and to consider, if circumstances during the transitional period required such consideration, whether the situation in Palestine constituted a threat to the peace. Since then, the Palestine question has continued to be on the agenda of both the General Assembly and the Security Council, the latter dealing in general with the security and military aspects of the matter, and the former with general political, economic and social aspects.

11. Decisions relevant to the matters treated in the Analytical Summary of Practice are those adopted at the fourth session of the General Assembly in connexion with the question of Indonesia and those of the Security Council in connexion with the Spanish question, the Greek frontier incidents question, the complaint of armed invasion of Taiwan (Formosa), and the complaint of aggression upon the Republic of Korea.

12. The provisions of Article 12 (2) have been implemented by means of notifications from the Secretary-General addressed to the President of the General Assembly, with the consent of the Security Council, of "matters relative to the maintenance of international peace and security which are being dealt with by the Security Council", and of matters with which the Security Council has ceased to deal. ^{2/} These notifications have been based upon the "Summary Statement by the Secretary-General

^{2/} G A (I/2), Plen., pp. 1479 and 1480, annex 31, A/124; G A (II), Plen., pp. 1449 and 1450, annex 2, A/389; G A (III/1), Plen., Annexes, p. 153, A/649, A/979; G A (V), Annexes, a.i. 7, pp. 1 and 2, A/1379; A/1928; A/2223; G A (VIII), Annexes, a.i. 7, p. 1, A/2472 and A/2732.

on matters of which the Security Council is seized and on the stage reached in their consideration", which is circulated each week in accordance with rule 11 2 of the provisional rules of procedure of the Security Council.

15. The items included in the notifications have been the same as those listed in the current "Summary Statement", with the exclusion of those items which were not considered as "matters relative to the maintenance of international peace and security". In the notifications up to and including that of 21 September 1950 4, at the beginning of the fifth session of the General Assembly, specific reference was made to the "Summary Statement".

14. As from the notification 5 of 22 October 1951 at the beginning of the sixth session, the matters being dealt with by the Council have been divided into two categories: first, matters "which are being dealt with by the Security Council, and which have been discussed" during the period since the previous notification; and second, matters of which the Security Council "remains seized" but which it "has not discussed" during that period.

15. In 1946 and 1947, the consent of the Security Council was given formally. 6/ Since then, it has been obtained by the Secretary-General from the members of the Council through the circulation of copies of draft notifications.

16. Notifications have also been issued when items have been expressly deleted from the list of matters of which the Security Council is seized. 7/

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the scope of the term "recommendation" as used in Article 12 (1)

17. This matter was discussed during the fourth session of the General Assembly in connexion with the question of Indonesia, which had been placed on the provisional

3/ Rule 11 reads as follows: "The Secretary-General shall communicate each week to the representatives on the Security Council a summary statement of matters of which the Security Council is seized and of the stage reached in their consideration."

Rule 49 of the rules of procedure of the General Assembly reproduces textually the provisions of Article 12 (2).

4/ G A (V), Annexes, a.i. 7, A/1379.
5/ A/1928.

6/ 1946 - S C, 1st yr., 2nd Series, No. 19, 77th mtg., p. 483; 1947 - S C, 2nd yr., No. 89, 202nd mtg., pp. 2405 and 2406.

7/ G A (I/2), Plen., p. 1480, annex 31 a, (A/177), and G A (V), Annexes, a.i. 7, p. 2, A/1379/Add.1.

agenda in accordance with resolution 274 (III) 8/ of the General Assembly and later included in the agenda as item 20.

18. During the discussion in the Ad Hoc Political Committee the question arose whether the two draft resolutions before the Committee contained "recommendations" within the meaning of Article 12 (1).

19. The first draft resolution 9/ was submitted jointly by the representatives of Afghanistan, Australia, Burma, China, Egypt, India, Iran, Iraq, Lebanon, Pakistan, Philippines, Saudi Arabia, Syria and Yemen. It provided that the General Assembly welcome the announcement that an agreement had been reached at the Round Table Conference held at The Hague, commend the parties concerned and the United Nations Commission for Indonesia for their contributions thereto and welcome the forthcoming establishment of the Republic of the United States of Indonesia as an independent, sovereign State.

20. The other draft resolution, 10/ submitted by the representative of the Ukrainian SSR, provided that the General Assembly deem it essential to take the following measures: to withdraw the Netherlands forces to the positions occupied by them before the commencement of hostilities; to demand that the Netherlands Government release the Indonesian political prisoners; to propose the establishment of a United Nations commission to observe the implementation of such measures and also to investigate the activities of the Netherlands authorities; to instruct the commission to prepare, and submit to the Security Council within three months, proposals for the settlement of the conflict between the Netherlands and the Indonesian Republic on the basis of the recognition of the independence and sovereign rights of the Indonesian people; and to dissolve the United Nations Commission for Indonesia.

8/ The Indonesian question (II) was submitted to the Security Council by Australia and India separately on 30 July 1947 and included in its agenda at its 171st meeting on 31 July 1947. At the second part of its third session, the General Assembly decided to include the item "the question of Indonesia" in its agenda, also at the request of Australia and India. At the 60th meeting of the General Committee on 8 April 1949, when the question of the inclusion of the item in the Assembly's agenda was considered, statements were made to the effect that although the General Assembly was entitled to discuss the matter, it would not be able, under Article 12 (1), to make recommendations, since the Security Council was seized of the question. See G A (III/2), Gen. Com., pp. 40, 42-44, 47 and 48, 50. At its 208th plenary meeting on 11 May 1949, the General Assembly adopted resolution 274 (III) which read as follows:

"The General Assembly,

"Noting the outcome of preliminary negotiations between the Netherlands and the Republic of Indonesia in Batavia as announced on 7 May 1949, which negotiations were based on the directives of the Security Council of 23 March 1949,

"Expressing the hope that this agreement will assist the attainment of a lasting settlement in accordance with the intentions of the Security Council resolution of 28 January 1949,

"Decides to defer further consideration of the item to the fourth regular session of the General Assembly."

9/ G A (IV), Ad Hoc Pol. Com., Annex, vol. I, p. 65, A/AC.31/L.50.

10/ G A (IV), Ad Hoc Pol. Com., Annex, vol. I, p. 65, A/AC.31/L.51.

21. During the discussion, the Chairman drew the attention of the Committee to the provisions of Article 12 (1). Pointing out that the Security Council was still seized of the question, he stated that, before putting each of the draft resolutions to the vote, he would ask the Committee to pronounce on whether its terms constituted a recommendation within the meaning of Article 12. 11/

Decisions

At its 50th meeting on 3 December 1949, the Ad Hoc Political Committee decided, 12/ by 42 votes to 1, with 6 abstentions, that the joint draft resolution did not constitute a recommendation within the meaning of Article 12 of the Charter. It then adopted 12a/ the joint draft resolution by 43 votes to 5, with 4 abstentions.

At the same meeting the Committee decided 12b/ by 42 votes to 5, with 4 abstentions, that the draft resolution submitted by the Ukrainian SSR did constitute a recommendation within the meaning of Article 12 of the Charter. The draft resolution was not, therefore, put to the vote.

22. The report 13/ of the Ad Hoc Political Committee was considered by the General Assembly at its 271st and 272nd plenary meetings. The draft resolution originally submitted 14/ by the Ukrainian SSR in the Ad Hoc Political Committee was resubmitted 15/ at the 271st plenary meeting. 16/

Decisions

At its 272nd plenary meeting on 7 December 1949, the draft resolution recommended by the Ad Hoc Political Committee was adopted by 44 votes to 5, with 2 abstentions. 17/

The proposal that the General Assembly should vote upon the Ukrainian draft resolution was rejected by 33 votes to 5, with 12 abstentions. 18/

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- 11/ For texts of relevant statements, see G A (IV), Ad Hoc Pol. Com., 56th mtg., Chairman (Iran), paras. 17 and 18, 100; Afghanistan, para. 48; Australia, paras. 24 and 25; Burma, paras. 35-37; Egypt, paras. 82 and 83; India, para. 3; Philippines, para. 47; Poland, paras. 78-80; Ukrainian SSR, paras. 6, 92-97; United States, paras. 41 and 42; USSR, paras. 49, 52, 63.
- 12/ G A (IV), Ad Hoc Pol. Com., 56th mtg., para. 116.
- 12a/ G A (IV), Ad Hoc Pol. Com., 56th mtg., para. 117.
- 12b/ G A (IV), Ad Hoc Pol. Com., 56th mtg., para. 118.
- 13/ G A (IV), Plen., Annex, pp. 59 and 60, A/1208.
- 14/ See para. 20 above.
- 15/ G A (IV), Plen., Annex, p. 60, A/1209.
- 16/ For texts of relevant statements, see G A (IV), Plen. 271st mtg.: India, paras. 3-10; Netherlands, paras. 49-60; Pakistan, paras. 61-72; Poland, paras. 73-102; Ukrainian SSR, paras. 11-48. 272nd mtg.: Belgium, paras. 46-52; Byelorussian SSR, paras. 1-21; Philippines, paras. 54-57; Ukrainian SSR, paras. 58-60; USSR, paras. 22-45.
- 17/ G A (IV), Plen., 272nd mtg., para. 53.
- 18/ G A (IV), Plen., 272nd mtg., para. 61.

B. The question of the meaning of the phrase "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter," and its effect upon the powers of the General Assembly

23. The scope of the restriction laid down in the first clause of Article 12 and its effect upon the powers of the General Assembly have been the subject of constitutional discussion in the Security Council in connexion with the Spanish question, the Greek frontier incidents question, the complaint of armed invasion of Taiwan (Formosa), and the complaint of aggression upon the Republic of Korea.

24. In the proceedings connected with the relevant decisions, representatives have on occasion maintained that the restriction does not affect the powers of discussion of the General Assembly and that, therefore, nothing forbids the simultaneous consideration of the same question in the Security Council and the General Assembly. On no occasion, however, has it been contended that the restriction should be interpreted as not covering recommendations by the General Assembly, although divergent views have been expressed as to the meaning and scope of the words "exercising in respect of any dispute or situation the functions".

25. A survey of the practice of the General Assembly and the Security Council in connexion with the four above-mentioned questions shows that the Assembly has dealt with them after the Council had decided, as in the case of the first, second and fourth questions, to remove them from the list of matters of which it was seized, or, as was the case with the complaint of armed invasion of Taiwan (Formosa), after the Council had decided "to defer consideration" of the question for a certain period.

26. The proceedings of the General Assembly on the question of Indonesia, which was considered by the Assembly while the Indonesian question (II) was on the list of matters of which the Security Council was seized, are in some respects relevant here, but have already been reviewed in paragraphs 17-22 above.

**1. Decisions of 26 June and 4 November 1946
in connexion with the Spanish question**

27. At the 48th meeting of the Security Council on 24 June 1946, the representative of Poland submitted a draft resolution ^{19/} which provided that the Council resolve "To keep the situation in Spain under continuous observation and to keep the question on the list of matters of which it is seized," and "To take up the matter again not later than 1 September 1946, in order to determine what appropriate practical measures provided by the Charter should be taken, it being understood that any member of the Security Council has a right to bring the matter up before the Council at any time before the mentioned date."

28. During the consideration of this draft resolution it was observed that if the matter was retained on the agenda of the Council until the General Assembly met, there might be a danger that the Assembly would be prevented from making any recommendation on the matter, unless the item was later removed from the agenda of the Council.

^{19/} S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 389.

29. The view was also expressed that merely to keep an item on the agenda of the Security Council was not to take action and therefore to exercise a function. Perhaps an interpretation of Article 12 was possible which would permit the matter to be kept on the agenda of the Council and, at the same time, leave the Assembly free to consider the matter.

30. At the same meeting the representative of the United Kingdom submitted an amendment 20/ which would insert after the words in the draft resolution submitted by the representative of Poland "resolves to keep the situation in Spain under continuous observation and . . .," the words "pending the meeting of the General Assembly next September," and also delete the clause of the draft resolution stating that the Security Council would "take up the matter again not later than 1 September 1946."

31. At the suggestion 21/ of the representative of Poland, the President appointed 22/ a drafting committee composed of the representatives of Australia, Poland and the United Kingdom to try to prepare a text of the draft resolution that would be acceptable to the Council.

32. At the 49th meeting on 26 June 1946, the representative of Australia presented, on behalf of the majority of the Committee, the representative of Poland dissenting, an amended text of the draft resolution. 23/ Its operative part read:

"The Security Council decides that without prejudice to the rights of the General Assembly under the Charter, the Council shall keep the situation in Spain under continuous observation and shall maintain it upon the list of matters of which it is seized, in order that it will be at all times ready to take such measures as may become necessary to maintain international peace and security. Any member of the Security Council may bring up the matter for consideration by the Council at any time."

33. The Security Council decided by 9 votes to 2, 24/ to consider this text to be an amendment to the draft resolution introduced by the representative of Poland at the 48th meeting. 25/

Decision

At the 49th meeting on 26 June 1946 the amended draft resolution was not adopted. There were 9 votes in favour and 2 against, 1 vote against being that of a permanent member. 26/

34. At the same meeting the representative of the USSR submitted an amended text 27/ of the draft resolution of the Committee.

- 20/ S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 394.
- 21/ S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 399.
- 22/ S C, 1st yr., 1st Series, No. 2, 48th mtg., p. 400.
- 23/ S C, 1st yr., 1st Series, No. 2; 49th mtg., p. 401.
- 24/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 413.
- 25/ For texts of relevant statements, see S C, 1st yr., 1st Series, No. 2.
48th mtg.: President (Mexico), p. 398; Australia, p. 391; France, p. 396;
Poland, pp. 389, 392, 398; USSR, p. 395; United Kingdom, p. 394; United States,
p. 397.
49th mtg.: Australia, pp. 442 and 443; USSR, pp. 444-446; United States, p. 446.
- 26/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 413.
- 27/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 434.

Decision

At the 49th meeting on 26 June 1946, the first sentence of the operative part of the USSR draft resolution, which read:

"The Security Council decides to keep the situation in Spain under continuous observation and maintain it upon the list of matters of which it is seized in order that it will be at all times ready to take such measures as may become necessary to maintain international peace and security."

was adopted. 28/

The second sentence, which read:

"The Security Council shall take up the matter again not later than 1 September 1946 in order to determine what appropriate practical measures provided by the Charter should be taken."

was rejected. There were 3 votes in favour, 7 against and 1 abstention. 29/

The last sentence, which read:

"Any member of the Security Council may bring the matter up for consideration by the Council at any time before the date mentioned."

was adopted with the omission of the words "before the date mentioned". 30/

35. The representative of Australia then submitted the following draft resolution: 31/

"That in the opinion of the Security Council the carrying of the resolution on the Spanish question dated 26 June, does not in any way prejudice the rights of the General Assembly under the Charter."

Decision

At the 49th meeting on 26 June 1946, the draft resolution was not adopted. There were 9 votes in favour and 2 against, 1 vote/against being that of a permanent member. 32/

36. At the 78th meeting of the Security Council on 30 October 1946, the representative of Poland stated 33/ that his delegation intended to present to the General Assembly draft resolutions containing certain recommendations on the Spanish question and that, taking the provisions of Article 12 into consideration and not wanting to prejudice in any way the interpretation thereof, he would propose that the Spanish question be taken off the list of matters of which the Security Council was seized.

28/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 441.

29/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 441.

30/ S C, 1st yr., 1st Series, No. 2, 49th mtg., pp. 441 and 442.

31/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 444.

32/ S C, 1st yr., 1st Series, No. 2, 49th mtg., p. 446.

33/ S C, 1st yr., 2nd Series, No. 20, 78th mtg., pp. 487 and 488.

37. At the 79th meeting on 4 November 1946, the representative of Poland submitted the following draft resolution: 34/

"The Security Council resolves that the situation in Spain be taken off the list of matters of which the Council is seized, and that all records and documents of the case be put at the disposal of the General Assembly."

38. During the discussion, the view was expressed that the crux of the matter was the exact meaning of the words "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter", used in Article 12. It was contended that the mere mention of a subject on the agenda need not be held to constitute the exercise of the functions of the Security Council within the meaning of Article 12. Several representatives also stated that the matter of interpreting the scope of the words in question should be thoroughly considered by the Council in the near future. 35/

39. The President (United Kingdom) asked 36/ the representative of Poland whether, for the sake of form, he would not add a sentence to his draft resolution to this effect:

"The Security Council requests the Secretary-General to notify the General Assembly of this decision."

The representative of Poland agreed 37/ to add this sentence to the draft resolution.

Decision

At the 79th meeting on 4 November 1946, the draft resolution, with the addition suggested by the President, was adopted unanimously. 38/

2. Decisions of 15 September 1947 in connexion with the Greek frontier incidents question

40. At the 202nd meeting of the Security Council on 15 September 1947, the representative of the United States submitted the following draft resolution: 39/

"The Security Council, pursuant to Article 12 of the Charter,

"(a) Requests the General Assembly to consider the dispute between Greece on the one hand, and Albania, Yugoslavia and Bulgaria on the other, and to make any recommendations with regard to that dispute which it deems appropriate under the circumstances;

"(b) Instructs the Secretary-General to place all records and documents in the case at the disposal of the General Assembly."

34/ S C, 1st yr., 2nd Series, No. 21, 79th mtg., p. 492.

35/ For texts of relevant statements, see:

S C, 1st yr., 2nd Series, No. 21, 79th mtg.: President (United Kingdom), pp. 497 and 498; Australia, pp. 493 and 494; Egypt, pp. 497 and 498; France, p. 495; Mexico, pp. 496 and 497; Poland, pp. 491 and 492; USSR, pp. 495 and 496; United States, pp. 494 and 495.

36/ S C, 1st yr., 2nd Series, No. 21, 79th mtg., p. 498.

37/ S C, 1st yr., 2nd Series, No. 21, 79th mtg., p. 498.

38/ S C, 1st yr., 2nd Series, No. 21, 79th mtg., p. 498.

39/ S C, 2nd yr., No. 89, 202nd mtg., p. 2369.

41. During the discussion, it was stated on the one side that the General Assembly should assist the Security Council in its efforts to bring about an improvement in the situation, but that the General Assembly could not exert all its powers under the Charter in a situation of this nature so long as the Security Council was exercising its functions in respect of a given question, unless the Security Council made an appropriate request in accordance with Article 12. It was argued also that the draft resolution was intended to remove a limitation upon the powers of the General Assembly which existed by reason of Article 12. The General Assembly would thus be enabled to make a recommendation if it so desired, but the Security Council would still be seized of the dispute. The view was expressed that in accordance with Article 12, the Council could either delete the matter from its agenda or request the General Assembly to make recommendations and continue to deal with the question at the same time as the General Assembly; the latter alternative, however, could result in contradictory decisions from the Security Council and the General Assembly. It was also contended that as long as the Security Council was seized of the question, recommendations from the General Assembly would be only to the Security Council.

42. On the other hand, it was stated that the situation in Greece represented a direct danger to international peace and security and, therefore, required that action be taken by the Security Council. For this reason, the question should remain on its agenda. Its removal from the agenda would mean that the Security Council would voluntarily abstain from taking a decision on the matter, and the request to the General Assembly for a recommendation would be universally interpreted as an abdication by the Security Council of its primary responsibility for the maintenance of international peace and security under the Charter. 40/

Decision

At the 202nd meeting on 15 September 1947, the United States draft resolution was not adopted. There were 9 votes in favour and 2 against, 1 vote against being that of a permanent member. 41/

43. Following the rejection of this draft resolution the representative of the United States submitted another draft resolution 42/ which provided that:

"The Security Council

"(a) Resolves that the dispute between Greece on the one hand, and Albania, Yugoslavia and Bulgaria on the other, be taken off the list of matters of which the Council is seized;"

Decision

At the 202nd meeting on 15 September 1947, the United States draft resolution was adopted by 9 votes to 2. 43/

40/ For text of relevant statements, see:

S C, 2nd yr., No. 89, 202nd mtg.: President (USSR), pp. 2376 and 2377, 2402; Australia, pp. 2372 and 2373; France, pp. 2384 and 2385; Poland, pp. 2379 and 2380; Syria, p. 2387; United States, pp. 2368 and 2369, 2383-2401.

41/ S C, 2nd yr., No. 89, 202nd mtg., pp. 2399 and 2400.

42/ S C, 2nd yr., No. 89, 202nd mtg., p. 2401.

43/ S C, 2nd yr., No. 89, 202nd mtg., p. 2405. Following the adoption of this resolution, the Security Council approved a draft notification from the Secretary-General to the General Assembly pursuant to Article 12 (2), after deletion of "The Greek question" from the list of matters concerned. (S C, 2nd yr., No. 89, 202nd mtg., pp. 2405 and 2406.)

**3. Decisions of 28 and 29 September 1950 in connexion with
the complaint of armed invasion of Taiwan (Formosa)**

44. At the 503rd meeting on 26 September 1950, the representative of China stated 44/ that the delegation of the USSR had proposed to include in the agenda of the fifth session of the General Assembly the item "Complaint of aggression against China by the United States of America". This item was identical with the item "Complaint of armed invasion of Taiwan (Formosa)", considered by the Security Council. According to Articles 10 and 12 of the Charter, the Security Council and the General Assembly should not discuss the same question simultaneously. For this reason, the representative of China proposed that the Security Council should cease consideration of the item "Complaint of armed invasion of Taiwan (Formosa)" during the consideration of this matter by the General Assembly.

45. During the discussion, it was stated that according to Article 12, while the Security Council was exercising the functions assigned to it by the Charter in respect of any dispute or situation, the General Assembly might not make any recommendation unless the Security Council so requested. Neither Article 10 nor 12, however, prohibited the General Assembly from discussing such questions. There had been precedents for this in the history of the United Nations. Despite the fact that the Indonesian question had been under discussion in the Security Council, it had been included in the agenda of the General Assembly for the very reason that Article 12 did not prohibit the General Assembly from considering and discussing questions which were on the agenda of the Security Council. 45/

46. At the 504th meeting on 27 September 1950, the representative of Ecuador submitted as an amendment 46/ to the proposal of the representative of China a text which provided that:

"The Security Council,

...

"Decides:

"(a) To defer consideration of this question until the first meeting of the Council held after 1 December 1950;"

47. At the 505th meeting of the Security Council on 28 September, the President put to the vote the following draft resolution 47/ submitted by the representative of China:

"The Security Council shall cease consideration of the complaint of armed invasion of Taiwan (Formosa) during the consideration of this item by the General Assembly."

44/ S C, 5th yr., No. 45, 503rd mtg., p. 29.

45/ For texts of relevant statements, see:

S C, 5th yr., No. 45, 503rd mtg.: USSR, pp. 30 and 31; United States, p. 33;

S C, 5th yr., No. 46, 504th mtg.: USSR, p. 5; United Kingdom, p. 18.

46/ S C, 5th yr., No. 46, 504th mtg., pp. 12 and 13, S/1817/Rev.1.

47/ S C, 5th yr., No. 47, 505th mtg., p. 20.

Decision

At the 505th meeting on 28 September 1950, the Chinese draft resolution was rejected. There were 2 votes in favour, 6 against and 3 abstentions. 48/

48. At the same meeting the President put to the vote the amendment 49/ submitted by the representative of Ecuador.

Decision

At the 505th meeting on 28 September 1950, the operative part of the Ecuadorean amendment was rejected. There were 6 votes in favour, 4 against and 1 abstention. 50/

49. At the 506th meeting of the Security Council on 29 September 1950, the representative of Ecuador reintroduced 51/ his amendment as a draft resolution, 52/ substituting the date "15 November 1950" for "1 December 1950" in the first paragraph of the operative part.

50. The draft resolution was put to a vote paragraph by paragraph.

Decision

At the 506th meeting on 29 September 1950, the last paragraph of the preamble 53/ of the Ecuadorean draft resolution, which read:

"Considering further that a complaint submitted by the Union of Soviet Socialist Republics regarding aggression against the territory of China by the United States of America has been placed on the agenda of the fifth session of the General Assembly and has been referred for consideration to the First Committee of the Assembly,"

was rejected. There were 2 votes in favour, 2 against and 7 abstentions. 54/
The operative part of the draft resolution was adopted by 7 votes to 4. The draft resolution as a whole, with the omission of the last paragraph of the preamble, was adopted by 7 votes to 3, with 1 abstention. 55/

4. Decision of 31 January 1951 in connexion with the complaint of aggression upon the Republic of Korea

51. In a letter 56/ dated 29 January 1951 to the President of the Security Council, the permanent representative of the United Kingdom pointed out that the item on the General Assembly's agenda entitled "Intervention of the Central People's Government of the People's Republic of China in Korea" had figured in the discussions of the Security Council under the heading "Complaint of aggression upon the Republic of

48/ S C, 5th yr., No. 47, 505th mtg., p. 21.

49/ See paragraph 46 above.

50/ S C, 5th yr., No. 47, 505th mtg., pp. 22 and 23.

51/ S C, 5th yr., No. 48, 506th mtg., p. 2.

52/ S C, 5th yr., No. 48, 506th mtg., pp. 3 and 4, S/1823/Corr.1.

53/ S C, 5th yr., No. 48, 506th mtg., p. 4.

54/ S C, 5th yr., No. 48, 506th mtg., p. 5.

55/ S C, 5th yr., No. 48, 506th mtg., p. 5.

56/ S C, 6th yr., Suppl. for Jan., Feb. and March, pp. 10 and 11, S/1922.

Korea". There might be some question whether the Security Council "is exercising the functions assigned to it in the present Charter" in respect of the item which was being considered by the Assembly. In order to remove any technical doubts which might be cast on the validity of any Assembly resolution containing recommendations to Members of the United Nations, it would be desirable, in the opinion of the United Kingdom delegation, that the item "Complaint of aggression upon the Republic of Korea" be removed from the agenda of the Security Council. The representative of the United Kingdom requested, therefore, that a meeting of the Security Council be called for that purpose, before the General Assembly was called upon to approve any recommendation on the item "Intervention of the Central People's Government of the People's Republic of China in Korea" which might be adopted by the First Committee.

52. At the 531st meeting on 31 January 1951, the representative of the United Kingdom submitted the following draft resolution: 57/

"The Security Council,

"Resolves to remove the item 'Complaint of aggression against the Republic of Korea' from the list of matters of which the Council is seized."

53. During the discussion, it was stated that a draft resolution concerning the intervention of the People's Republic of China in Korea had been put to the vote at the 530th meeting of the Security Council on 30 November 1950. Although it had received nine affirmative votes, it had not been adopted owing to the negative vote of a permanent member. It might, therefore, be argued that since that date the Council had not, in effect, been exercising its functions in respect of this question within the meaning of Article 12. It was also maintained by certain representatives that the Security Council had not been exercising, in regard to this item, the functions assigned to it under the Charter since the month of November 1950. The proposed step was, therefore, unnecessary and any action of the Council on the draft resolution should not be cited as a precedent binding the Council on all future occasions.

54. It was contended by one representative that all decisions adopted on this matter by the Security Council had been illegal, since they had been adopted in the absence of two permanent members, that is, in violation of the Charter provision that decisions of the Security Council on matters of substance must be agreed to by all its permanent members. 58/

Decision

At the 531st meeting on 31 January 1951, the United Kingdom draft resolution was adopted unanimously. 59/

**C. The question of the requests by the Security Council
to the General Assembly in accordance with
the proviso of Article 12 (1)**

55. Draft resolutions providing that the Security Council request the General Assembly to make recommendations with regard to a dispute or situation which was being

57/ S C, 6th yr., 531st mtg., S/1995, para. 38.

58/ For texts of relevant statements, see S C, 6th yr., 531st mtg.: China, paras. 42 and 43; United Kingdom, paras. 35-39.

59/ S C, 6th yr., 531st mtg., para. 57.

dealt with by the Council have been the subject of substantial constitutional discussion in connexion with the Spanish question and the Greek frontier incidents question. The matter was discussed from the standpoint of the extent of the powers of the Council as regards requests to the General Assembly to make recommendations, and the effect of such requests on the responsibility and authority of the Council. In both cases the proceedings have followed a similar pattern: draft resolutions providing for the requests have failed of adoption 60/ by the Council, and subsequently other draft resolutions proposing that these matters "be taken off the list of matters of which the Council is seized" were submitted and adopted.

56. The proceedings connected with the decisions in respect of the Greek frontier incidents question have already been reviewed above 61/ and those related to the decisions on the Spanish question are summarized below.

*Decisions of 18 June and 4 November 1946 in connexion
with the Spanish question*

57. At the 44th meeting on 6 June 1946, the Security Council began consideration of the report and recommendations 62/ of the Sub-Committee 63/ of the Security Council instructed to investigate the Spanish question.

58. At the 45th meeting, on 13 June 1946, the representative of Australia, as Chairman of the Sub-Committee, submitted a draft resolution 64/ which provided that:

"Whereas the Sub-Committee on the Spanish question made the three following recommendations in paragraph 31 (a), (b), and (c) of its report to the Security Council:

" . . .

"(b) The transmitting by the Security Council to the General Assembly of the evidence and reports of this Sub-Committee, together with the recommendation that, unless the Franco regime is withdrawn and the other conditions of political freedom set out in the declaration are, in the opinion of the General Assembly, fully satisfied, a resolution be passed by the General Assembly recommending that diplomatic relations with the Franco régime be terminated forthwith by each Member of the United Nations; ...' 65/

" . . .

60/ In both cases the question arose whether or not the matter was a procedural matter within the meaning of Article 27 (2). See also in this Repertory under Article 27.

61/ See paras. 40-43 above.

62/ S C, 1st yr., 2nd Series, Special Suppl., 8/75.

63/ This Sub-Committee was established by S C resolution of 29 April 1946, S C, 1st yr., 1st Series, No. 2, 45th mtg., pp. 311 and 312.

64/ S C, 1st yr., 1st Series, No. 2, 45th mtg., p. 326.

65/ The representative of Brazil, a member of the Sub-Committee, reserved his position regarding recommendation (b).

"The Security Council resolves

"To adopt the three recommendations of the Sub-Committee set forth above, subject to the addition to recommendation (b), after the words 'each Member of the United Nations', of the following words: 'or alternatively such other action be taken as the General Assembly deems appropriate and effective under the circumstances prevailing at the time'."

59. In introducing the draft resolution the representative of Australia stated that, in his opinion as Chairman of the Sub-Committee, its adoption would represent no diminution of the powers of the Security Council, but the exercise by the Council of its power to recommend methods of adjustment or suitable procedures, and to refer a matter to other organs of the United Nations whenever the circumstances were thought fit by the Council.

60. Other representatives argued that it would be inappropriate for the Security Council to prejudice the course of action the General Assembly should take, and that no Article of the Charter referred to recommendations by the Council to the General Assembly, although Article 12 provided that recommendations might be made by the General Assembly to the Security Council. It was further stated that it was within the rights of the Security Council to deal with the whole matter and make its own final decisions but that if it decided to refer the matter to the General Assembly, with or without recommendations, the power of the General Assembly could not in any way be impaired; and that even if the Council made recommendations, the Assembly would not be bound by them.

61. On the other hand, some representatives expressed the view that a decision to refer the matter to the General Assembly would be incompatible with the authority of the Security Council; that acceptance of the Sub-Committee's recommendations should in no way prejudice the rights of the Security Council nor should it be invoked as a precedent which would justify the Council, when faced with a difficult situation, to avoid responsibility and refer the matter to another organ of the United Nations. 66/

62. At the 46th meeting on 17 June 1946, the representative of the United Kingdom submitted an amendment 67/ to the draft resolution submitted by the representative of Australia as the Chairman of the Sub-Committee, which would adopt the recommendations of the Sub-Committee, subject to the deletion of the part of paragraph (b), coming after the words "reports of this Sub-Committee", and the addition of the words "together with the minutes of the discussion of the case by the Security Council".

Decision

At the 47th meeting on 18 June 1946, the United Kingdom amendment was rejected by 6 votes to 2, with 3 abstentions. 68/ The three recommendations of the Sub-Committee were not adopted. There were 9 votes in favour, 1 against and 1 abstention, the negative vote being that of a permanent member. 69/

66/ For texts of relevant statements, see: S C, 1st yr., 1st Series, No. 2. 44th mtg.: Chairman of the Sub-Committee (Australia), pp. 311 and 312, 326; 45th mtg.: Australia, pp. 326 and 327; Egypt, pp. 330 and 331; USSR, pp. 337 and 338; United States, p. 328; 46th mtg.: President (Mexico), pp. 360-364; Australia, pp. 349-357; France, pp. 357-360; United Kingdom, pp. 347 and 348; 47th mtg.: Australia, pp. 376 and 377; Poland, p. 373.

67/ S C, 1st yr., 1st Series, No. 2, 46th mtg., pp. 348 and 349.

68/ S C, 1st yr., 1st Series, No. 2, 47th mtg., p. 378.

69/ S C, 1st yr., 1st Series, No. 2, 47th mtg., pp. 378 and 379.

63. At the 49th meeting on 26 June 1946, the Security Council adopted 70/ a resolution in accordance with which it would "keep the situation in Spain under continuous observation and maintain it upon the list of matters of which it is seized".

64. The Security Council again considered the Spanish question at the 78th and 79th meetings on 30 October and 4 November 1946, when a draft resolution submitted by the representative of Poland to the effect that "the situation in Spain be taken off the list of matters of which the Council is seized", was adopted unanimously. 71/

70/ See decision following para. 34 above.

71/ See paras. 36-39 above.

ARTICLE 13 (1) (a)

WITH REGARD TO THE PROMOTION OF INTERNATIONAL CO-OPERATION IN THE POLITICAL FIELD

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TEXT OF ARTICLE 13 (1) (a) - PROVISION RELATING TO THE PROMOTION OF INTERNATIONAL CO-OPERATION IN THE POLITICAL FIELD

1. The General Assembly shall initiate studies and make recommendations for the purpose of:
 - a. promoting international cooperation in the political field

INTRODUCTORY NOTE

1. Article 13 is divided into two paragraphs. The first contains two sub-paragraphs, one dealing with the powers and functions of the General Assembly with respect to political and legal matters and the other with its powers and functions relating to economic and social matters. The second paragraph of Article 13 contains a general reference to the Assembly's further responsibilities in connexion with international economic and social co-operation, as set forth in Chapters IX and X of the Charter.

2. The present study is limited to the consideration of the practice of the Assembly regarding the application of the first part of paragraph 1 (a), dealing with the promotion of international co-operation in the political field. This provision is closely related to the first part of paragraph 1 of Article 11, which provides that the General Assembly "may consider the general principles of cooperation in the maintenance of international peace and security" and it has been invoked by the Assembly in a number of decisions which bear also on the application of that Article.

3. The General Survey in this study treats the decisions which contain an explicit reference to Article 13, paragraph 1 (a), in connexion with the Assembly's function of "promoting international cooperation in the political field". In a broad sense, many of the recommendations adopted by the Assembly in this field may be considered as aimed indirectly at promoting international co-operation. However, it has seemed advisable to restrict the present study to those decisions containing an explicit reference to this particular provision of the Article. Moreover, the Interim Committee itself concluded in 1948 that a precise and exhaustive interpretation of Article 13 would not, at that early stage of development under the Charter, be desirable or practicable (see paragraph 18).

4. All decisions dealt with in this study are related to the terms of reference and work of the Interim Committee or have been adopted by the Assembly on the recommendation of that Committee. The relevant provision of Article 13 has been mentioned during the debates leading to these decisions but no discussion of a constitutional nature has arisen with regard to it. ^{1/} Incidental references to this provision have also been

^{1/} For constitutional discussion on other parts of the resolutions embodying these decisions, see also in this Repertory under Articles 11, 22 and 35.

made during the consideration of other items on the agenda of the General Assembly; ^{2/} these are treated in those studies in the Repertory to which they are more closely allied by virtue of the specific terms of the relevant Articles.

5. The question of the meaning and scope of the provision of Article 13 bearing on the promotion of international co-operation in the political field was raised in the Interim Committee, which reported to the General Assembly the conclusion reached by its Sub-Committee 6 on the matter. This question is treated in the Analytical Summary of Practice, below.

I. GENERAL SURVEY

The Interim Committee of the General Assembly

1. Establishment and terms of reference

6. The power of initiating studies for the purpose of promoting international co-operation in the political field was exercised by the General Assembly when it established and re-established the Interim Committee and defined its terms of reference by resolutions 111 (II), 196 (III) and 295 (IV).

7. These resolutions contain express reference to this provision of Article 13 and instruct the Interim Committee to initiate studies towards its implementation.

8. Resolution 111 (II) stated that the General Assembly, "conscious of the responsibility specifically conferred upon it by the Charter" in relation to matters concerning "the promotion of international co-operation in the political field (Article 13)", established, for the period between the second and third regular sessions of the General Assembly, the Interim Committee to assist the Assembly in the performance of its functions by discharging the following duties: "To consider, as it deems useful and advisable, and report with its conclusions to the General Assembly on methods to be adopted to give effect ... to that part of Article 13 (paragraph 1a) which deals with the promotion of international co-operation in the political field".

9. At the third session, the General Assembly had before it the report of the Interim Committee, ^{3/} in which the Committee recommended a long-range study programme not limited to the question of methods, as envisaged in its original terms of reference, but extending to the substantive implementation of the pertinent part of Article 13. By resolution 196 (III) the Assembly affirmed that, for the effective performance of the duties conferred upon it by the Charter in relation to matters concerning "the promotion of international co-operation in the political field (Article 13)", it was necessary to continue the Interim Committee, and decided accordingly to re-establish it for the period between its third and fourth regular

^{2/} These agenda items have included: Convocation of a general conference under Article 109 of the Charter to amend the privilege of the veto; United action for peace; Methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter; Duties of States in the event of the outbreak of hostilities; Palestine question.

^{3/} G A (III), Suppl. No. 10.

sessions. The Interim Committee was asked to assist the General Assembly in the performance of its functions by discharging the following duties: "To consider systematically, using as a starting point the recommendations and studies of the Interim Committee contained in document A/605, 4/ the further implementation ... of that part of Article 13 (paragraph 1a) which deals with the promotion of international co-operation in the political field, and to report with conclusions to the General Assembly".

10. In its report to the General Assembly 5/ at the fourth session, the Interim Committee submitted a programme of work for the implementation of Article 13 (1) (a). The Assembly adopted resolution 295 (IV), re-establishing the Interim Committee to meet when the General Assembly was not actually in regular session, with the same terms of reference in relation to the first part of Article 13 (1) (a) as were contained in resolution 196 (III), with the addition that the Interim Committee should also use its "recommendations and studies ... contained in documents A/605 and A/AC.18/91". 6/

2. Studies prepared by the Committee

11. In carrying out its programme of work, the Interim Committee, during its second and third sessions, prepared studies on the general question of the pacific settlement of disputes, 7/ on the organization and operation of United Nations commissions 8/ and on the handling of disputes and political problems by the General Assembly. 9/ The Committee did not recommend any action on these studies by the General Assembly. It stated that the studies were intended to assist Member Governments in the appraisal of the existing methods of pacific settlement in the light of the Charter and, in particular, of their own arrangements in this field.

12. In order to assist the Interim Committee, the Secretariat prepared a number of studies which served as a basis for the examination of current machinery and procedure

4/ G A (III), Suppl. No. 10, pp. 22-36.

5/ G A (IV), Suppl. No. 11.

6/ G A (III), Suppl. No. 10, pp. 22-36; G A (IV), Suppl. No. 11, annex I, pp. 5-11.

7/ G A (III), Suppl. No. 10, pp. 23-31.

8/ G A (IV), Suppl. No. 11, annex II, pp. 12-26.

9/ G A (V), Suppl. No. 14, annex A, pp. 4-36.

in the field of pacific settlement. 10/ Studies were also prepared by representatives of Member States, in one case at the request of a sub-committee of the Committee. 11/

3. Resolutions adopted by the General Assembly on the Committee's recommendation

13. The Interim Committee also submitted formal draft resolutions to the General Assembly. Four of these resolutions were adopted by the Assembly at its third session. Three of them included a reference to Article 13 (1) (a). Only one of them made a formal recommendation to the Security Council. All, however, contained implicit recommendations to Member States, the Security Council and the Secretary-General aimed at the promotion of international peace and security.

14. In resolution 203 A (III) the General Assembly, stating that it was "Mindful of its responsibilities", under Article 13 (1) (a), to promote "international co-operation in the political field", instructed the Secretary-General to prepare a revised text of the General Act of 26 September 1928 for the pacific settlement of international disputes and to hold it open to accession by States, under the title "Revised General Act for the Pacific Settlement of International Disputes".

15. Identical references to Article 13 (1) (a) were contained in resolution 203 B (III), on the appointment of a rapporteur or conciliator for a situation or dispute brought to the attention of the Security Council, and in resolution 203 D (III), on the creation of a panel for inquiry and conciliation.

10/ The following studies were prepared:

- (1) Use by organs of the United Nations of measures and procedures of pacific settlement (A/AC.18/61);
- (2) Measures and procedures of pacific settlement employed by the League of Nations (A/AC.18/68);
- (3) Analysis of the main features of the Inter-American peace system (A/AC.18/46 and A/AC.18/46/Add.1);
- (4) History and analysis of the General Act for the pacific settlement of international disputes of 26 September 1928 (A/AC.13/56);
- (5) History and analysis of the General Convention for improving the means of preventing war and the regulations for the execution of article 4 of this Convention (A/AC.18/55);
- (6) Analysis of provisions in pacific settlement treaties calling for action by organs of the League of Nations or the Permanent Court of International Justice and of United Nations documents relating to the assumption by United Nations organs of functions of the League of Nations and of the Permanent Court of International Justice (A/AC.18/57);
- (7) Analysis of the structure and working of arrangements for inquiry and conciliation under existing treaties, with respect to (a) The nature of commissions provided for by treaties, (b) Time schedules, (c) Methods of appointment, (d) Extent to which the positions on permanent commissions have been kept filled, and (e) Actual cases referred to conciliation and fact-finding procedures (A/AC.18/64);
- (8) Main features of the American Treaty on Pacific Settlement (Pact of Bogota) (A/AC.13/12);
- (9) Organization and procedure of United Nations commissions (twelve memoranda prepared by the Secretary-General at the request of the Interim Committee - United Nations Publications, Sales No.: 1949.X.1-9, and United Nations Publications, Sales No.: 1950.X.1-3).

11/ A/AC.18/SC.9/L.5.

II. ANALYTICAL SUMMARY OF PRACTICE

Meaning and scope of the provision of that part of paragraph 1 (a) which deals with the promotion of international co-operation in the political field

16. The question of the meaning and scope of this provision was raised in the Interim Committee as well as in its Sub-Committee G, which had been entrusted with the study of the provision's implementation.

17. At its first session, the Interim Committee requested the Secretariat to prepare a study on Articles 11 (1) and 13 (1) (a) of the Charter. This study ^{12/} surveyed the historical background of Article 13 from the Dumbarton Oaks negotiations to and including the Conference on International Organization at San Francisco. It came to the conclusion that:

"Article 13, paragraph 1, may be regarded as transition from the functions of the General Assembly dealing with the maintenance of peace and security, to its functions, more nearly legislative in character, dealing with constructive effort to secure co-operation between States in the field of 'peaceful change' with which Article 14 deals. The word 'political' is given no explanation, but it is set off as against legal development in the same clause, and as against economic, social and other fields, which were transferred to the following clause. In all these fields, political or not, an opportunity is afforded to the General Assembly to diminish the causes of war by securing agreement and co-operation among States which might otherwise resort to war. This opportunity, insofar as the political field is concerned, was probably provided already by Article 10. The action to be taken by the General Assembly would presumably be in the form of resolutions or recommendations or the submission of draft conventions; its authority cannot in any case reach beyond that of recommendation."

18. The discussions which took place in the Interim Committee and its Sub-Committee do not show any difference of opinion on the substance of this question. Such differences as existed were due rather to drafting difficulties in formulating conclusions. The conclusions, as finally embodied in the report of Sub-Committee G and transmitted by the Interim Committee to the General Assembly, stated:

"... From its discussion of the meaning of the relevant parts of Articles 11 (paragraph 1) and 13 (paragraph 1a) of the Charter, the Sub-Committee concluded that a precise and exhaustive interpretation of these Articles would not, at this early stage of development under the Charter, be desirable or practicable. It is of the opinion that such an interpretation would be likely to prove unduly confining to the General Assembly in the future. These provisions are essentially general in character, and their precise content can be established only through the actual practice of the Assembly itself over the years and the general experience of international organization." ^{13/}

19. In resolution 295 (IV) the General Assembly requested the Interim Committee to use those conclusions for the further consideration of the implementation of that part of Article 13 which deals with the promotion of international co-operation in the political field.

^{12/} A/AC.18/33.

^{13/} G A (IV), Suppl. No. 11, annex I, para. 9.

20. As indicated in paragraph 9 above, the terms of reference of the Interim Committee were broadened at the third session of the General Assembly to cover not only methods to give effect to paragraph 1 (a) in the political field but also the implementation of Article 13 in a more general sense. The increased scope of the Committee's work was acknowledged by Sub-Committee 6 when it stated in its report that the work might extend to "the substance of international problems". ^{14/} The Sub-Committee did not recommend, however, the initiation at that moment of "any studies concerned with the substance of political questions" and gave priority to the work on existing procedures and machinery of pacific settlement, recognizing that at a later stage it would be necessary to extend its study to other aspects of international co-operation.

^{14/} G A (IV), Suppl. No. 11, annex I, para. 12.

ARTICLE 13 (1) (a)

WITH REGARD TO THE ENCOURAGEMENT OF THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION

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TEXT OF ARTICLE 13 (1) (a) - PROVISION RELATING TO THE PROGRESSIVE DEVELOPMENT AND CODIFICATION OF INTERNATIONAL LAW

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

a. ... encouraging the progressive development of international law and its codification.

INTRODUCTORY NOTE

1. Article 13 (1) (a) gives the General Assembly the functions and powers of initiating studies and of making recommendations for the purpose of "encouraging the progressive development of international law and its codification". Accordingly, this study is confined to those actions which constituted an initiation of studies or a making of recommendations and which were, explicitly or implicitly, for that specific purpose. Hence, where the General Assembly initiated a study or made a recommendation which, by its nature, was clearly for another purpose, for example, for the promotion of "universal respect for, and observance of, human rights", such action is deemed to lie outside of the purview of this study--even though it might have the effect of encouraging the progressive development of international law and its codification.

2. It is, however, not always easy to ascertain the precise purpose of the General Assembly where, without explicitly stating a specific purpose, it has initiated a study or made a recommendation which might have such an effect. Examples are decisions of the General Assembly concerning the question of defining aggression and covering international criminal jurisdiction. As these questions had, at an early stage of their consideration, been referred to the International Law Commission, the organ created by the General Assembly for the express purpose of the promotion of the progressive development of international law and its codification, references are made to them in this study.

3. By its terms, the provision of Article 13 (1) (a), with regard to the progressive development of international law and its codification, raises three questions which concern (a) the initiation of studies, (b) the making of recommendations and (c) the meaning of "progressive development", and of "codification", of international law. The practice in respect of these questions is discussed in the Analytical Summary of Practice below.

4. The General Survey includes a brief account of the establishment of the International Law Commission.

5. A table containing the titles, numbers, quoted passages or summaries of the resolutions mentioned in the present study is annexed hereto.

I. GENERAL SURVEY

6. The practice of the General Assembly under Article 13 (1) (a), with regard to the progressive development of international law and its codification, may, by the terms of

that provision, be said to consist of two types of action, namely, the initiation of studies and the making of recommendations, both for the purpose of encouraging the progressive development of international law and its codification.

7. The General Assembly, during its second session, by resolution 174 (II), "Recognizing the need for giving effect to Article 13, paragraph 1, sub-paragraph a, of the Charter", decided to establish an International Law Commission "which shall be constituted and shall exercise its functions in accordance with the provisions" of a Statute annexed to the resolution. This resolution was adopted on the basis of a report ^{1/} submitted by the Committee on the Progressive Development of International Law and its Codification, appointed by the General Assembly during its first session. ^{2/} In accordance with resolution 174 (II) and the Statute annexed thereto, the members of the International Law Commission were elected by the General Assembly at its third session on 3 November 1948, ^{3/} and the Commission held its first session in 1949.

8. Under its Statute, the International Law Commission "shall have for its object the promotion of the progressive development of international law and its codification"; it "shall concern itself primarily with public international law, but is not precluded from entering the field of private international law" (article 1). The Commission "shall consist of fifteen members who shall be persons of recognized competence in international law" and no two members shall be nationals of the same State (article 2). The members, who serve in their individual capacity and not as representatives of States, are elected by the General Assembly from a list of candidates nominated by the Governments of Members of the United Nations (article 3). Their term of office is three years and they are eligible for re-election (article 10). In case of a casual vacancy, however, the Commission is empowered to fill the vacancy by itself (article 11). The members of the Commission serve on a part-time basis, the suggestion ^{4/} of the Committee on the Progressive Development of International Law and its Codification for full-time service having been rejected. ^{5/} The Statute gives an explanation of "progressive development", and of "codification", of international law, and provides for each a different procedure to be followed by the Commission. In each case, the Commission is required to submit its draft, with recommendations, to the General Assembly. It has also been the practice of the Commission to submit to the General Assembly a report on the work of each of its sessions.

^{1/} G A (II), 6th Com., pp. 173-182, annex 1 (A/331). This report was discussed by sub-committee 2 of the Sixth Committee. The sub-committee drafted the Statute of the International Law Commission. For the report of this sub-committee, see *ibid.*, pp. 188-204, annex 1 g (A/C.6/193).

^{2/} G A resolution 94 (I). The Committee was composed of representatives of seventeen States Members of the United Nations.

^{3/} G A (III/1), Resolutions, p. vi. In 1950, the term of office of the then incumbent members of the Commission, which was for three years, was extended by two years, under General Assembly resolution 496 (V). When the extended term was due to expire, another election was held at the eighth session of the General Assembly in 1953, G A (VIII), Suppl. No. 17 (A/2630), p. viii.

^{4/} G A (II), 6th Com., pp. 173-182, annex 1 (A/331), para. 5 (d).

^{5/} G A (II), 6th Com., pp. 188-204, annex 1 g (A/C.6/193), para. 4. The suggestion for full-time service was subsequently made by the International Law Commission itself in a report to the General Assembly, G A (VI), Suppl. No. 9 (A/1858), paras. 63-67. The General Assembly, however, decided, by resolution 600 (VI), not to take any action, for the time being, to revise the Statute of the Commission.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The Initiation of Studies

1. *The power of the General Assembly*

9. The General Assembly has, so far, initiated a number of studies which may be said to be, explicitly or implicitly, "for the purpose of ... encouraging the progressive development of international law and its codification", as envisaged in Article 13 (1) (a). Resolutions initiating studies were, in most cases, adopted on the recommendation of the Sixth Committee. Two resolutions, however, had their origin in the First Committee, namely, those concerning the draft Declaration on the Rights and Duties of States ^{6/} and the question of defining aggression. ^{7/} The organs to which questions were referred for study have included the International Law Commission, an *ad hoc* committee, and the Secretary-General. One question has been referred to an international technical conference. ^{8/} Moreover, the same question has been in some cases referred to different organs at successive stages.

a. STUDIES TO BE CARRIED OUT BY THE INTERNATIONAL LAW COMMISSION

10. Article 16 of the Statute of the International Law Commission provides that "When the General Assembly refers to the Commission a proposal for the progressive development of international law, the Commission shall follow in general a procedure" laid down in that article. With respect to the codification of international law, the same Statute stipulates, in article 18, paragraph 3, that "The Commission shall give priority to requests of the General Assembly to deal with any question."

11. At its second session, the General Assembly directed ^{9/} the International Law Commission to "(a) Formulate the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal" and "(b) Prepare a draft code of offences against the peace and security of mankind". It also instructed ^{10/} the Commission "to prepare a draft declaration on the rights and duties of States". At its third session, the General Assembly, in connexion with its discussion of the Convention on the Prevention and Punishment of the Crime of Genocide, invited the International Law Commission "to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions;". ^{11/} During its fourth session, the General Assembly initiated a study on the régime of territorial waters by recommending that the Commission include that topic in its list of priorities. ^{12/}

12. At its fifth session, the General Assembly, considering that certain reservations to the Convention on the Prevention and Punishment of the Crime of Genocide had been objected to, invited ^{13/} the International Law Commission

^{6/} G A resolution 38 (I).

^{7/} G A resolution 378 B (V).

^{8/} For the purpose of this study, requests by the General Assembly to the International Court of Justice for an advisory opinion are not considered as actions taken under Article 13 (1) (a).

^{9/} G A resolution 177 (II).

^{10/} G A resolution 178 (II).

^{11/} G A resolution 260 B (III).

^{12/} G A resolution 374 (IV).

^{13/} G A resolution 478 (V).

"In the course of its work on the codification of the law of treaties, to study the question of reservations to multilateral conventions both from the point of view of codification and from that of the progressive development of international law; to give priority to this study and to report thereon, especially as regards multilateral conventions of which the Secretary-General is the depositary, this report to be considered by the General Assembly at its sixth session;"

At the same session, the General Assembly, in connexion with its consideration of the agenda item "Duties of States in the event of the outbreak of hostilities", referred 14/ "the proposal of the Union of Soviet Socialist Republics /designed to define aggression and submitted to the First Committee/ and all the records of the First Committee dealing with this question to the International Law Commission, so that the latter may take them into consideration and formulate its conclusions as soon as possible."

13. During its seventh session, the General Assembly, considering that early codification of international law on diplomatic intercourse and immunities was necessary and desirable "as a contribution to the improvement of relations between States", requested 15/ the International Law Commission, "as soon as it considers it possible, to undertake the codification" of that topic. At the following session, the General Assembly requested 16/ the same Commission, "as soon as it considers it advisable, to undertake the codification of the principles of international law governing State responsibility".

b. STUDIES TO BE CARRIED OUT BY AD HOC COMMITTEES

14. Prior to the establishment of the International Law Commission, the General Assembly, at the second part of its first session, referred two questions to the Committee on the Progressive Development of International Law and its Codification. 17/ It referred 18/ to the Committee the text of the draft Declaration on the Rights and Duties of States submitted by Panama, together with the comments received from Governments and national or international organizations, and requested the Committee to report at the second session of the General Assembly. It also directed 19/ the Committee "to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal".

15. The General Assembly, on several occasions, has set up ad hoc committees to make the studies which it has initiated. Thus, with regard to the question of international criminal jurisdiction, the Assembly at its fifth session, in 1950, having considered the report 20/ of the International Law Commission to which the question had previously been referred, established 21/ the Committee on International Criminal Jurisdiction, composed of the representatives of seventeen Member States, which was to meet in Geneva

14/ G A resolution 378 B (V).

15/ G A resolution 685 (VII).

16/ G A resolution 799 (VIII).

17/ This Committee was established by resolution 94 (I) and has been referred to in para. 7 above.

18/ G A resolution 38 (I).

19/ G A resolution 95 (I).

20/ G A (V), Suppl. No. 12 (A/1316), part IV. See para. 10 above.

21/ G A resolution 489 (V).

on 1 August 1951 "for the purpose of preparing one or more preliminary draft conventions and proposals relating to the establishment and the statute of an international criminal court". During its seventh session, the General Assembly, having received the report 22/ of the Committee, with a draft statute for an international criminal court annexed thereto, established 23/ another committee, which came to be known as the "1953 Committee on International Criminal Jurisdiction", to study certain aspects of the question of international criminal jurisdiction and to re-examine the draft Statute submitted by the 1951 Committee.

16. With respect to the question of defining aggression, which had in the first instance been referred to the International Law Commission, 24/ the General Assembly, at its seventh session, established 25/ the Special Committee on the Question of Defining Aggression, composed of representatives of fifteen Member States. This Special Committee was requested "To submit to the General Assembly at its ninth session draft definitions of aggression or draft statements of the notion of aggression" and to study certain other problems related to the question. The report 26/ of this Committee was considered by the General Assembly at its ninth session. The General Assembly then decided 27/ to establish yet another Special Committee composed of representatives of nineteen Member States which was requested "to submit to the General Assembly at its eleventh session a detailed report followed by a draft definition of aggression, having regard to the ideas expressed at the ninth session of the General Assembly and to the draft resolutions and amendments submitted".

C. STUDIES TO BE CARRIED OUT BY THE SECRETARY-GENERAL

17. The General Assembly, when establishing the International Law Commission during its second session, did so by a separate resolution. 28/ Under the terms of this resolution, the Assembly, "considering that, in accordance with Article 98 ... the Secretary-General performs all such functions as are entrusted to him by the organs of the United Nations", instructed the Secretary-General "to do the necessary preparatory work for the beginning of the activity" of the Commission. This preparatory work included preliminary studies on the draft Declaration on the Rights and Duties of States. 29/ In resolution 489 (V) establishing the Committee on International Criminal Jurisdiction, the General Assembly requested the Secretary-General "to prepare and submit" to the Committee "one or more preliminary draft conventions and proposals regarding" an international criminal court. During its sixth session, the General Assembly, after considering the report of the International Law Commission on the question of defining aggression, instructed 30/ the Secretary-General "to submit to the General Assembly at its seventh session a report in which the question of defining aggression shall be thoroughly discussed in the light of the views expressed in the Sixth Committee ... and which shall duly take into account the draft resolutions and amendments submitted concerning this question".

22/ G A (VII), Suppl. No. 11 (A/2136).

23/ G A resolution 687 (VII).

24/ See para. 12 above. See also: G A (VI), Suppl. No. 9 (A/1858), chap. III.

25/ G A resolution 688 (VII).

26/ G A (IX), Suppl. No. 11 (A/26,8).

27/ G A resolution 895 (IX).

28/ G A resolution 175 (II).

29/ G A resolution 178 (II).

30/ G A resolution 599 (VI).

18. In connexion with the question of ways and means for making the evidence of customary international law more readily available, the Secretary-General was, on three different occasions, requested by the General Assembly to undertake certain studies. At its fifth session the General Assembly invited 31/ the Secretary-General "to consider and report to the General Assembly" upon certain recommendations 32/ of the International Law Commission on that question. Having considered the report of the Secretary-General at its next session, the General Assembly requested 33/ him "to submit to the General Assembly at its seventh session a report containing detailed plans as to the form, contents and budgetary implications in regard to the possible publication of: (a) A United Nations juridical yearbook ...; (b) A consolidated index to the League of Nations Treaty Series; (c) A list of treaty collections supplementary to those already existing; (d) A volume containing a repertoire of the practice of the Security Council." At its seventh session the General Assembly, acting upon the report of the Secretary-General, authorized 34/ him "to undertake, as soon as feasible, the publication of: (a) A list of treaty collections, to be compiled taking into account the suggestions made during the debate in the Sixth Committee; (b) A repertoire of the practice of the Security Council". It also requested him "to prepare and circulate to the governments of Member States a comparative study of the extent to which developments in the field of customary international law and selected legal activities of the United Nations can usefully be covered by an expansion of existing United Nations publications, by the launching of new special publications of limited scope and by a United Nations juridical yearbook; such study shall cover form, contents and budgetary implications".

d. STUDIES TO BE CARRIED OUT BY AN INTERNATIONAL TECHNICAL CONFERENCE

19. As part of its work on the régime of the high seas, the International Law Commission had submitted 35/ to the General Assembly a set of three draft articles on fisheries with the recommendation that the General Assembly adopt these draft articles by resolution and "enter into consultation with the United Nations Food and Agriculture Organization with a view to the preparation of a draft convention incorporating the principles adopted by the Commission". At its ninth session the General Assembly, "Having regard to the fact that the problem of the international conservation of fisheries involves matters of a technical character which require consideration on a wide international basis by qualified experts", requested 36/ the Secretary-General to convene "an international technical conference". This conference was to be held at the headquarters of the Food and Agriculture Organization on 18 April 1955 "to study the problem of the international conservation of the living resources of the sea and to make appropriate scientific and technical recommendations which shall take into account the principles of the present resolution and shall not prejudice the related problems awaiting consideration by the General Assembly". All States "Members of the United Nations and ... of the specialized agencies" were to be invited to participate and to include among their representatives "individual experts competent in the field of fishery conservation and regulation". Interested specialized agencies and inter-governmental organizations concerned with problems of the international conservation of the living resources of the sea were to be invited to send observers to the conference.

31/ G A resolution 487 (V).

32/ G A (II), Suppl. No. 12 (A/1316), paras. 90, 91 and 93. The Commission made these recommendations in pursuance of article 24 of its Statute.

33/ G A resolution 602 (VI).

34/ G A resolution 686 (VII).

35/ G A (VIII), Suppl. No. 9 (A/2456), paras. 92-103.

36/ G A resolution 900 (IX).

The report of the conference was to be circulated "for information" to the Governments of all States invited to participate in the conference. It was to be referred to the International Law Commission "as a further technical contribution to be taken into account" in its studies of the régime of the high seas, the régime of territorial waters and related problems.

2. The power of initiative of Member States and certain bodies

20. In the field of the progressive development of international law, the General Assembly also gave the power of initiative to Members of the United Nations, to the principal organs of the United Nations other than the General Assembly, to the specialized agencies, and to official bodies established by inter-governmental agreement to encourage the progressive development of international law and its codification.

21. Article 17 of the Statute of the International Law Commission provides:

"1. The Commission shall also consider proposals and draft multilateral conventions submitted by Members of the United Nations, the principal organs of the United Nations other than the General Assembly, specialized agencies, or official bodies established by inter-governmental agreement to encourage the progressive development of international law and its codification, and transmitted to it for that purpose by the Secretary-General.

"2. If in such cases the Commission deems it appropriate to proceed with the study of such proposals or drafts, it shall follow in general procedure on the following lines:

"(a) The Commission shall formulate a plan of work, and study such proposals or drafts and compare them with any other proposals and drafts on the same subjects;

"(b) The Commission shall circulate a questionnaire to all Members of the United Nations and to the organs, specialized agencies and official bodies mentioned above which are concerned with the question, and shall invite them to transmit their comments within a reasonable time;

"(c) The Commission shall submit a report and its recommendations to the General Assembly. Before doing so, it may also, if it deems it desirable, make an interim report to the organ or agency which has submitted the proposal or draft;

"(d) If the General Assembly should invite the Commission to proceed with its work in accordance with a suggested plan, the procedure outlined in article 16 above shall apply. The questionnaire referred to in paragraph (c) of that article may not, however, be necessary."

22. In the drafting of article 17 of the Statute, there was some discussion as to whether any body, other than the General Assembly, should be authorized to take the initiative in making proposals or submitting draft conventions to the International Law Commission for the progressive development of international law. In the Committee on the Progressive Development of International Law and its Codification, 37/

37/ See para. 7 above.

objection ^{38/} was made that under Article 13 of the Charter, the initiative for undertaking studies and making recommendations for the progressive development of international law and its codification lay solely with the General Assembly, and that to give other bodies the power of initiative would be contrary to the Charter. It was further contended that if individual Governments, specialized agencies and international organizations were allowed to initiate studies, the proposed International Law Commission would be over-burdened. ^{39/} On the other hand, it was argued ^{40/} that, in the future as in the past, any of the bodies referred to would undoubtedly have suggestions with regard to international law and that the General Assembly would wish the proposed Commission to study them and report back to it. The proposal, in effect, to allow Member States and the specified bodies to make proposals and submit draft conventions to the International Law Commission was approved by 12 votes to 3, with 2 abstentions. ^{41/} The Statute of the International Law Commission was finally drawn up in Sub-Committee 2 of the Sixth Committee at the second session of the General Assembly, and a proposal that the Commission should deal only with the tasks entrusted to it by the General Assembly was rejected by a vote of 10 to 4. The Sub-Committee reported: ^{42/}

"Certain delegations thought that paragraph 9 ^{of} the report of the Committee on the Progressive Development of International Law and its Codification, which paragraph formed the basis of article 17 of the Statute ⁷ should be deleted. In their opinion the commission should deal only with the tasks entrusted to it by the General Assembly. If Governments, specialized agencies, and so forth, were allowed to send in subjects for study by the commission, the latter might be swamped with less important work. On the other hand, it was pointed out that under paragraph 9, sub-paragraph (a), section (iv), the General Assembly would always have power to decide whether the study of the proposed project should be continued. Moreover, the international law commission could refuse to take up subjects less important than those which it proposed to handle. The Sub-Committee rejected the proposal, to delete paragraph 9 by 10 votes to 4."

23. The provisions of article 17 of the Statute of the International Law Commission have been invoked only twice, both times by the Economic and Social Council.

24. On the first occasion, the Council, upon a recommendation of its Commission on the Status of Women in regard to the nationality of married women, and in view of the fact that the International Law Commission had previously included among the topics of international law selected for codification "Nationality, including statelessness",

^{38/} See summary records of the Committee:

A/AC.10/SR.13:

USSR, pp. 13 and 14; Yugoslavia, p. 15;

A/AC.10/SR.14:

Argentina, p. 4; Poland, p. 2;

A/AC.10/SR.25:

Poland, p. 7; USSR, p. 6; Yugoslavia, p. 6.

^{39/} The Committee, however, "Unanimously recognized that the Economic and Social Council possesses the right of initiative in proposing conventions". See report of that Committee, G A (II), 6th Com., annex 1 (A/331), para. 9, footnote 1 on p. 177.

^{40/} A/AC.10/SR.13, p. 14, United States.

^{41/} A/AC.10/SR.13, p. 15.

^{42/} G A (II), 6th Com., annex 1 g (A/C.6/1953), p. 197, para. 14. No Official Records of proceedings of the Sub-Committee were published.

proposed, by resolution 304 D (XI) of 17 July 1950, to the International Law Commission "that it undertake as soon as possible the drafting of a convention to embody the principles recommended by the Commission on the Status of Women". This proposal was transmitted to the Commission, at its second session in 1950, through the Secretary-General. The Commission, thereupon, adopted the following decision: 43/

"The International Law Commission

"Deems it appropriate to entertain the proposal of the Economic and Social Council in connexion with its contemplated work on the subject of 'nationality, including statelessness';

"Proposes to initiate that work as soon as possible."

25. On the second occasion, the Economic and Social Council, by resolution 319 B (XI) of 11 August 1950, urged that the International Law Commission "prepare at the earliest possible date the necessary draft international convention or conventions for the elimination of statelessness". This request was forwarded by the Secretary-General to the Commission during its third session in 1951. The Commission, having, at the same session, decided "to initiate work" on the topic of "nationality, including statelessness", which it had, at its first session, selected for codification, and having appointed one of its members special rapporteur on the subject, declared 44/ that the matter of statelessness "lies within the framework of the topic of 'nationality, including statelessness'".

26. With regard to the question of nationality of married women, the International Law Commission, at its fourth session in 1952, had before it a report on nationality, including statelessness, 45/ submitted by its special rapporteur on that subject. This report contained a draft of a convention on nationality of married persons framed in accordance with the special rapporteur's view as embodied in a proposal to the International Law Commission that it draft a convention "embodying the principles recommended by the Commission on the Status of Women" without, however, expressing approval of those principles. The proposal of the rapporteur was rejected by the International Law Commission, by 8 votes to 3, with 1 abstention. 46/ The reasons for this decision were explained in the report 47/ of the Commission, as follows:

"The Commission was of the opinion that the question of nationality of married women could not but be considered in the context, and as an integral part, of the whole subject of nationality including statelessness. Furthermore, it did not see fit to confine itself to the drafting of a text of a convention to embody principles which it had not itself studied and approved."

The Commission decided, however, to make available the special rapporteur's report, together with the summary records 48/ of its discussion of the question, to the Economic and Social Council for its information. 49/ This was done by a letter from

43/ G A (V), Suppl. No. 12 (A/1316), para. 20.

44/ G A (VI), Suppl. No. 9 (A/1858), para. 85.

45/ A/CN.4/50.

46/ A/CN.4/SR.155, para. 49.

47/ G A (VII), Suppl. No. 9 (A/2163), para. 30.

48/ A/CN.4/SR.155 and A/CN.4/SR.156.

49/ A/CN.4/SR.156, paras. 34-38.

the chairman of the Commission to the Secretary-General who transmitted that letter by a note 50/ to the Economic and Social Council.

27. On the question of statelessness, the International Law Commission, at its sixth session in 1954, adopted 51/ a draft Convention on the Elimination of Future Statelessness and a draft Convention on the Reduction of Future Statelessness. These were submitted to the General Assembly. In addition, the Commission submitted to the General Assembly certain proposals which it had adopted with respect to the question of present statelessness but concerning which it had decided 52/ that:

"In view of the great difficulties of a non-legal nature which beset the problem of present statelessness, the Commission considered that the proposals adopted, though worded in the form of articles, should merely be regarded as suggestions which Governments may wish to take into account when attempting a solution of this urgent problem."

3. The power of initiative of the International Law Commission

28. In the field of the codification of international law, the General Assembly, while exercising its power under Article 13 (1) (a), also authorized the International Law Commission to initiate studies. Article 18 of the Statute of the Commission provides:

"1. The Commission shall survey the whole field of international law with a view to selecting topics for codification, having in mind existing drafts, whether governmental or not.

"2. When the Commission considers that the codification of a particular topic is necessary or desirable, it shall submit its recommendations to the General Assembly.

"3. The Commission shall give priority to requests of the General Assembly to deal with any question."

29. The International Law Commission, at its first session in 1949, undertook a survey of the whole field of international law and drew up a list of fourteen topics selected for codification. 53/ It was understood that this list was to be only provisional and that additions or deletions might be made after further study by the Commission or in compliance with the wishes of the General Assembly. 54/ The list follows:

- (1) Recognition of States and Governments;
- (2) Succession of States and Governments;
- (3) Jurisdictional immunities of States and their property;
- (4) Jurisdiction with regard to crimes committed outside national territory;
- (5) Régime of the high seas;
- (6) Régime of territorial waters;
- (7) Nationality, including statelessness;

50/ E/2343. The letter from the Chairman of the International Law Commission was reproduced in para. 8 of the note.

51/ G A (IX), Suppl. No. 9 (A/2693), chap. II, part one.

52/ *Ibid.*, part two, para. 36.

53/ G A (IV), Suppl. No. 10 (A/925), paras. 13-16.

54/ *Ibid.*, para. 17.

- (8) Treatment of aliens;
- (9) Right of asylum;
- (10) Law of treaties;
- (11) Diplomatic intercourse and immunities;
- (12) Consular intercourse and immunities;
- (13) State responsibility;
- (14) Arbitral procedure.

30. The Commission decided, furthermore, to initiate study on three of the foregoing topics by giving "priority" to them, namely, (1) law of treaties, (2) arbitral procedure and (3) régime of the high seas. It elected, from among its members, a rapporteur for each topic, and, pursuant to article 19, paragraph 2, of its Statute, decided to request Governments to furnish the texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other documents relevant to the topics. ^{55/} At its third session in 1951, the Commission decided to initiate study on an additional topic which had been provisionally selected for codification, namely, that of nationality, including statelessness, and appointed another of its members as rapporteur on that subject.

31. In undertaking a survey of the whole field of international law and in selecting topics for codification, the Commission was, at its first session, ^{56/} confronted with the question whether it could proceed with the work of codification without awaiting approval by the General Assembly of the topics selected by the Commission. The question was, in other words, whether under paragraph 2 of article 18 of the Statute the Commission had the power of initiating a study for the codification of the international law on a subject selected by it.

32. Some members held the view that, under paragraph 2 of article 18 of the Statute, the Commission must submit to the General Assembly any topics it had selected for codification and await the General Assembly's approval before beginning work. It was urged that the Commission was not an autonomous organ enjoying complete liberty, but was to carry out certain tasks which had been entrusted to it by the General Assembly, any task it undertook requiring approval by the latter.

33. On the other hand, the opinion was expressed that the logical interpretation of paragraph 2 of article 18 was that the Commission, having selected a topic, was competent to proceed with the work of codification of that topic, unless otherwise directed by the General Assembly. It was pointed out ^{57/} that the judgment whether the codification of a topic was necessary or desirable could be made only after a thorough study of the topic, which involved the application of the entire procedure envisaged in articles 19 to 23 of the Statute. Only after this had been done, could the Commission, pursuant to article 22, recommend to the General Assembly to take one of the alternative actions described in paragraph 1 of article 23 of the Statute.

34. The matter was put to the Commission by the Chairman at the third meeting. ^{58/} At its fourth meeting the Commission, by 10 votes to 3, replied in the affirmative to the following question: "Has the Commission competence to proceed with its work

^{55/} Ibid., paras. 19-22.

^{56/} G A (IV), Suppl. No. 10 (A/925), paras. 9-12.

^{57/} A/CN.4/SR.2, p. 13.

^{58/} A/CN.4/SR.3, p. 15.

according to the procedure provided in articles 19 to 23, without awaiting the General Assembly's decision on the recommendations submitted by the Commission under article 18, paragraph 2," 59/

35. The same question arose in the Sixth Committee during the fourth session of the General Assembly when the report of the International Law Commission came under consideration. 60/ While there was general agreement in the Committee that the General Assembly had the power to approve or disapprove, in the last resort, the selection of topics made by the Commission, divergent views were expressed as to whether the International Law Commission might proceed with the codification of a subject selected by it, before the General Assembly had approved the selection. The Committee found the wording of article 18, paragraph 2, to be ambiguous.

36. Some representatives pointed out that paragraph 2 of article 18 of the Statute of the International Law Commission gave the Commission a power of initiative only in the selection of topics; once the Commission had selected and studied a topic and was of the opinion that its codification was necessary or desirable, it was to present a recommendation to that effect to the General Assembly which would then decide whether or not it was desirable for the process of codification to go forward. They saw the selection of topics as a technical task belonging to the Commission, and the decision on whether to proceed with the codification of a topic so selected as one of a political nature which was solely the responsibility of the General Assembly. It was pointed out that the Commission was a subsidiary organ and that, under Article 13 of the Charter, the codification of international law was primarily a responsibility of the General Assembly. Moreover, it was asked what would happen if, after the Commission had codified a given topic, the General Assembly decided that codification of that topic was neither necessary nor desirable.

37. On the other hand, some representatives maintained that the word "recommendations" in the plural form in paragraph 2 of article 18 should be interpreted to include the recommendations referred to in articles 22 and 23 of the Statute. The provision in paragraph 3 of article 18, to the effect that the Commission "shall give priority to requests of the General Assembly to deal with any question", would be meaningless if the Commission were always to await the approval by the General Assembly of its selection of topics for codification. It was further observed that it would be a waste of time for the Commission to await such approval before beginning its work on the topics selected by it.

38. The Sixth Committee finally voted upon the following question:

"Is it necessary that the General Assembly should approve the topics recommended by the International Law Commission for the codification of international law in order to enable the Commission to carry on its work in the field of the selected topics, in accordance with articles 18 to 22 of its statute?"

By 21 votes to 9, with 16 abstentions, the Sixth Committee answered this question in the negative. The General Assembly eventually adopted resolution 373 (IV) whereby it "approves part I of the report of the International Law Commission", which contained the decision of the Commission, described in paragraph 34 above.

59/ A/CN.4/SR.4, p. 7.

60/ G A (IV), Plen., Annex, a.i. 49, A/1196, paras. 10-13a, pp. 191 and 192. For discussions in the Committee, see summary records of its 158th to 164th meetings, G A (IV), 6th Com., pp. 100-143.

B. The Making of Recommendations

39. The General Assembly has, so far, made a number of recommendations which may be said to be, explicitly or implicitly, "for the purpose of ... encouraging the progressive development of international law and its codification", as envisaged in Article 13 (1) (a) of the Charter. Some of these recommendations were for the general purpose of furthering or facilitating the progressive development of international law and its codification, while others dealt with a specific subject or question. ^{61/} There has been no controversy, either in the proceedings of the General Assembly or in those of its subsidiary organs, as to the extent of the power of the General Assembly to make recommendations for that purpose, or as to the meaning of the expression "make recommendations".

1. Recommendations of a general nature

40. The General Assembly, at its second session, during which it decided to establish the International Law Commission, adopted a resolution calling for the promotion of the teaching of international law. ^{62/} The preamble declared: (a) that it was necessary to further the aims of General Assembly resolution 94 (I) "which initiated the fulfilment of Article 13, paragraph 1, sub-paragraph a, of the Charter, regarding the development of international law and its codification" by establishing the Committee on the Progressive Development of International Law and its Codification; (b) that "one of the most effective means of furthering the development of international law consists in promoting public interest in this subject and using the media of education and publicity to familiarize the peoples with the principles and rules that govern international relations;" and (c) that "greater knowledge of and fuller information on the aims, purposes and structure of the United Nations constitute another positive method of assisting the development of international law, of which the United Nations is the main instrument". For these reasons, the General Assembly resolved to request the Governments of Member States,

"1. To take appropriate measures to extend the teaching of international law in all its phases, including its development and codification, in the universities and higher educational institutions of each country that are under government control or over which Governments have some influence, or to initiate such teaching where it is not yet provided;

"2. To promote similar teaching regarding the aims, purposes, structure and operation of the United Nations in conjunction with paragraph 1 above and in accordance with resolution 137 (II) adopted by the General Assembly on 17 November 1947, on the teaching of the purposes and principles, the structure and activities of the United Nations in the schools of Member States."

^{61/} Besides these recommendations, which are of a positive nature, the General Assembly also adopted several resolutions, in effect, postponing consideration of or decision on certain questions. As these decisions do not seem to constitute recommendations for the purpose of encouraging the progressive development of international law and its codification, they are not discussed in this study. Such decisions were made in respect of: (1) the draft Declaration on Rights and Duties of States, G A resolution 596 (VI); (2) the draft Code of Offences against the Peace and Security of Mankind, G A resolution 897 (IX); (3) international criminal jurisdiction, G A resolution 898 (IX); (4) the draft articles on the continental shelf, as a part of the subject of the régime of the high seas, G A resolutions 798 (VIII) and 899 (IX).

^{62/} G A resolution 176 (II).

41. At the same session, the General Assembly adopted another resolution stressing the need for greater use by the United Nations and its organs of the International Court of Justice.^{63/} This resolution declared that "it is a responsibility of the United Nations to encourage the progressive development of international law" and that "it is also of paramount importance that the International Court of Justice should be utilized to the greatest practicable extent in the progressive development of international law, both in regard to legal issues between States and in regard to constitutional interpretation". The resolution further recommended that

"organs of the United Nations and the specialized agencies should, from time to time, review the difficult and important points of law within the jurisdiction of the International Court of Justice which have arisen in the course of their activities and involve questions of principle which it is desirable to have settled, including points of law relating to the interpretation of the Charter of the United Nations or the constitutions of the specialized agencies, and, if duly authorized according to Article 96, paragraph 2, of the Charter, should refer them to the International Court of Justice for an advisory opinion."

2. Recommendations on specific subjects or questions

42. At its first session, the General Assembly, by resolution 95 (I), affirmed "the principles of international law recognized by the Charter of the Nurnberg Tribunal and the judgment of the Tribunal". It did so as it recognized "the obligation laid upon it by Article 13, paragraph 1, sub-paragraph a, of the Charter, to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification". When the International Law Commission submitted its formulation of the Nurnberg Principles, ^{64/} in accordance with General Assembly resolution 177 (II) referred to in paragraph 11 above, the General Assembly, by resolution 488 (V), invited Governments of Member States to furnish their observations thereon. It further requested the Commission, in preparing the draft Code of Offences against the Peace and Security of Mankind, to take account of the observations made on the Commission's formulation by delegations in the General Assembly as well as the observations by Governments.

43. With reference to the draft Declaration on Rights and Duties of States, ^{65/} prepared by the International Law Commission in pursuance of General Assembly resolution 178 (II) also referred to in paragraph 11 above, the General Assembly, by resolution 375 (IV), "Considering that it is a responsibility of the United Nations, and more especially of the General Assembly, under Article 13 of the Charter, to encourage the progressive development of international law and its codification", declared that it "Deems the draft declaration a notable and substantial contribution towards the progressive development of international law and its codification and as such commends it to the continuing attention of Member States and of jurists of all nations". The General Assembly, however, did not adopt the draft declaration but transmitted it to Member States "for consideration", with a request for comment.

44. On the question of reservations to multilateral conventions, the General Assembly, having considered the report ^{66/} of the International Law Commission as well as the

^{63/} G A resolution 171 (II).

^{64/} G A (V), Suppl. No. 12 (A/1316), part III.

^{65/} G A (IV), Suppl. No. 10 (A/925), part II.

^{66/} G A (VI), Suppl. No. 9 (A/1858), chap. II.

advisory opinion of the International Court of Justice 67/ both rendered in pursuance of General Assembly resolution 478 (V) referred to in paragraph 12 above, adopted resolution 598 (VI) whereby it:

"1. Recommends that organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them;

"2. Recommends to all States that they be guided in regard to the Convention on the Prevention and Punishment of the Crime of Genocide by the advisory opinion of the International Court of Justice of 28 May 1951;

"3. Requests the Secretary-General:

"(a) In relation to reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, to conform his practice to the advisory opinion of the Court of 28 May 1951;

"(b) In respect of future conventions concluded under the auspices of the United Nations of which he is the depositary:

"(i) To continue to act as depositary in connexion with the deposit of documents containing reservations or objections, without passing upon the legal effect of such documents; and

"(ii) To communicate the text of such documents relating to reservations or objections to all States concerned, leaving it to each State to draw legal consequences from such communications."

45. With respect to the draft Convention on Arbitral Procedure, 68/ submitted by the International Law Commission as the result of a study it initiated on the topic of arbitral procedure referred to in paragraph 30 above, the General Assembly, by resolution 797 (VIII), decided to transmit to Member States the draft, together with the observations made thereon in the Sixth Committee, "with a view to the submission by governments of whatever comments they may deem appropriate, if possible, before 1 January 1955". It further requested the Secretary-General to include the question in the provisional agenda of the tenth session of the General Assembly.

46. As to the draft Convention on the Elimination of Future Statelessness and the draft Convention on the Reduction of Future Statelessness, 69/ both submitted by the International Law Commission as part of its work on the topic of nationality, including statelessness, referred to in paragraph 27 above, the General Assembly, by resolution 896 (IX), expressed its desire "that an international conference of plenipotentiaries be convened to conclude a convention for the reduction or elimination of future statelessness as soon as at least twenty States have communicated to the Secretary-General their willingness to co-operate in such a conference". The Secretary-General was requested to communicate the draft conventions submitted by the

67/ Reservations to the Convention on Genocide, Advisory Opinion: ICJ Reports 1951, p. 15.

68/ G A (VIII), Suppl. No. 9 (A/2456), chap. II.

69/ G A (IX), Suppl. No. 9 (A/2693), chap. II.

International Law Commission "to Member States and to each non-member State which is or hereafter becomes a member of one or more of the specialized agencies of the United Nations or which is or hereafter becomes a Party to the Statute of the International Court of Justice" and to invite such States to participate in the conference. The resolution also requested the Governments of such States "to give early consideration to the merits of a multilateral convention on the elimination or reduction of future statelessness".

C. The Meaning of "Progressive Development", and of "Codification", of International Law

1. As set forth in the Statute of the International Law Commission

47. The terms "progressive development", and "codification", of international law are explained in article 15 of the Statute of the International Law Commission 70/ as follows:

"In the following articles the expression 'progressive development of international law' is used for convenience -- as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly, the expression 'codification of international law' is used for convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive state practice, precedent and doctrine."

48. The difficulty of drawing a clear-cut distinction between the two terms was emphasized by the Committee on the Progressive Development of International Law and its Codification, in which the substance of article 15 was first conceived. Paragraph 7 of the report 71/ of that Committee, after distinguishing between the task of progressive development and that of codification, stated:

"The Committee recognizes that the terms employed are not mutually exclusive, as, for example, in cases where the formulation and systematization of the existing law may lead to the conclusion that some new rule should be suggested for adoption by States."

Paragraph 10 of the same report stated:

"For the codification of international law, the Committee recognized that no clear-cut distinction between the formulation of the law as it is and the law as it ought to be could be rigidly maintained in practice. It was pointed out that in any work of codification, the codifier inevitably has to fill in gaps and amend the law in the light of new developments. The Committee by a majority vote, however, agreed that for the purposes of the procedures adopted below namely, the procedures of codification which became articles 18 to 23

70/ For the establishment of the International Law Commission and the adoption of its Statute, see paras. 7 and 8 above.

71/ G A (II), 6th Com., pp. 173-182, annex 1 (A/331).

of the Statute⁷, the definition given in paragraph 7 above ⁷which became part of article 15 of the Statute⁷ would be applicable."

Both paragraphs were approved by Sub-Committee 2 of the Sixth Committee. ^{72/}

2. In the light of the practice of the International Law Commission

49. The practice of the International Law Commission appears to confirm the difficulty of drawing a clear-cut distinction between the terms "progressive development", and "codification", of international law. The Commission stated its view as follows: ^{73/}

"The Statute of the Commission clearly envisages, and regulates separately, these two functions ⁷progressive development and codification⁷. This does not mean that these two functions can be invariably -- or even normally -- kept apart in the drafts prepared by the Commission. In the case of some topics it may be possible to limit the function of the Commission to one or the other of these two fields of its activity. In the case of other topics these two functions must be combined if the Commission is to fulfil its dual task of, in the language of Article 13 of the Charter of the United Nations, 'progressive development of international law and its codification'. At the same time the Commission considers it of utmost importance that the difference between these two aspects of its activity should be constantly borne in mind."

50. It does not seem always possible infallibly to infer, merely from the procedure that the International Law Commission applied, that a certain task which it undertook or a certain draft which it submitted fell within the category of progressive development, or that of codification, of international law. In the first place, the Commission does not seem to have attached great importance to strict adherence to the procedures provided in its Statute, for progressive development and for codification. In the second place, the Statute of the Commission seems to allow for some flexibility. This is especially so with regard to the type of recommendations that the Commission might make in relation to a final draft it submits to the General Assembly. The Commission, in submitting its draft Convention on Arbitral Procedure, stated: ^{74/}

"So far as recommendations proposed by the Commission are concerned, it seems to matter little whether a final draft falls within the category of development or that of codification. While article 23 of the Statute ... specifies the kind of recommendations which the Commission may make to the General Assembly on any given subject, article 16 (j) refers to recommendations generally. There seems to be no reason for any differentiation between the two kinds of recommendation. Neither does it appear that any such differentiation was intended."

51. The following instances where the International Law Commission has given some indication as to the nature of certain of its tasks or drafts, may throw light upon the meaning, in the practice of the Commission, of the terms "progressive development", and "codification", of international law.

^{72/} Report of Sub-Committee 2, *ibid.*, pp. 188-204, annex 1 (A/C.6/193), para. 15. The report was approved by the Sixth Committee.

^{73/} G A (VIII), Suppl. No. 9 (A/2456), para. 15.

^{74/} *Ibid.*, para. 54.

52. At its fifth session in 1953, the Commission, as part of its work on the topic of the régime of the high seas, adopted a set of three draft articles 75/ covering the basic aspects of the international regulation of fisheries. With regard to the nature of these draft articles, the Commission stated: 76/

"In adopting these articles the Commission adhered in substance to the provisional draft of the articles formulated at its third session in 1951. In their main aspect both drafts go beyond the existing law and must be regarded to a large extent as falling within the category of progressive development of international law."

The Commission recommended: 77/

"(a) that the General Assembly should by resolution adopt that part of the report of the Commission dealing with fisheries and the draft articles; and (b) that it should enter into consultation with the United Nations Food and Agriculture Organization with a view to the preparation of a draft convention incorporating the principles adopted by the Commission."

53. The Commission, at the same session, also adopted, again as a part of its work on the topic of the régime of the high seas, a single draft article on the contiguous zone. It pointed out 78/ that the principle underlying the draft article had encountered no opposition on the part of the Governments which had since made observations on the subject and it stated that it believed that principle "to be in accordance with a widely adopted practice". As to the extent of the contiguous zone laid down in the draft article (twelve miles), the Commission said 79/ that it believed that "on the whole, that limit approximates most closely to general practice as acquiesced in by States." Citing article 23, paragraph 1 (a), of its Statute, the Commission recommended 80/ "the General Assembly to take no action with regard to the article on the contiguous zone, since the present report is already published", a type of recommendation envisaged in the Statute for the codification of international law.

54. In three instances, the International Law Commission indicated that it regarded the draft it submitted to the General Assembly as falling within the category both of the progressive development and the codification of international law. First, with respect to the draft Convention on Arbitral Procedure 81/ submitted by it to the General Assembly, the Commission stated: 82/

"The present draft on arbitral procedure has a dual aspect. While in some matters, which are of a fundamental nature, it does no more than codify the existing law of international arbitration, in other respects its provisions are in the nature of a formulation, *de lege ferenda*, of what the Commission considers to be desirable developments in this field of arbitral procedure."

75/ G A (VIII), Suppl. No. 9 (A/2456), para. 94.

76/ *Ibid.*, para. 95.

77/ *Ibid.*, para. 102.

78/ *Ibid.*, para. 106.

79/ *Ibid.*, para. 107.

80/ *Ibid.*, para. 114.

81/ *Ibid.*, chap. II.

82/ *Ibid.*, para. 15.

It further stated: 83/

"... the present final draft of the Commission falls within the category both of the progressive development and the codification of international law."

With respect to the draft, the Commission made a recommendation in the following terms: 84/

"In the opinion of the Commission the final draft on arbitral procedure as adopted calls for action, on the part of the General Assembly, contemplated in paragraph (c) of article 23 of the Statute of the Commission, namely, 'to recommend the draft to Members with a view to the conclusion of a convention'. The Commission makes a recommendation to that effect."

55. The same is true of the draft articles on the continental shelf 85/ prepared by the International Law Commission. The Commission declared: 86/

"It is probable that the same cumulation of functions must apply, in varying proportions, to other aspects of the work of the Commission. Thus, the position is similar with respect to the questions of the continental shelf and of statelessness covered by chapters III and IV of the report."

With respect to these draft articles, it continued,

"The Commission recommends to the General Assembly the adoption by resolution of this part of the present report and the draft articles on the continental shelf incorporated therein." 87/

56. Finally, as appears from the statement quoted in the preceding paragraph, the International Law Commission also regarded its work on the question of statelessness as being in the nature of both progressive development and codification of international law. When the Commission decided, at its fifth session, to give publicity to its provisional draft conventions on the elimination and reduction of future statelessness, and to refer them to Governments for comment, it cited the provisions of its Statute regarding the progressive development, as well as those governing the codification, of international law. 88/ When the Commission decided, at its sixth session, to submit its final draft Conventions to the General Assembly, its report 89/ did not deal with the question of the nature of its work, whether progressive development or codification. It submitted a final draft of each of the two aforementioned Conventions. Article 12 of both draft conventions contemplated that the convention should be approved by the General Assembly which would open it for signature by "any Member of the United Nations and ... any non-member State to which an invitation to sign is addressed by the General Assembly."

83/ G A (VIII), Suppl. No. 9 (A/2456), para. 54.

84/ *Ibid.*, para. 55.

85/ *Ibid.*, para. 62.

86/ *Ibid.*, para. 54.

87/ *Ibid.*, para. 91.

88/ *Ibid.*, para. 120.

89/ G A (IX), Suppl. No. 9 (A/2693), chap. II.

57. In two instances the Commission considered its task to be neither progressive development nor codification, but a "special task" or "special assignment" entrusted to it by the General Assembly. First, in respect of its task in relation to the draft Declaration on the Rights and Duties of States 90/ submitted by it to the General Assembly in pursuance of the latter's resolution 178 (II), 91/ the Commission stated: 92/

"The Commission, with Mr. Vladimir M. Korotetsky dissenting, came to the conclusion that its function in relation to the draft Declaration fell within neither of the two principal duties laid upon it by its Statute, but constituted a special assignment from the General Assembly. It was within the competence of the Commission to adopt in relation to this task such a procedure as it might deem conducive to the effectiveness of its work."

The Commission accordingly decided "to submit the draft Declaration, through the Secretary-General, to the General Assembly immediately, and to place on record its conclusion that it was for the General Assembly to decide what further course of action should be taken in relation to the draft Declaration and, in particular, whether it should be transmitted to Member Governments for comments". 93/

58. Secondly, the International Law Commission also considered 94/ its task in relation to the question of international criminal jurisdiction a "special task" assigned by the General Assembly, under the latter's resolution 260 B (III). 95/ Under that resolution, the Commission was invited "to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions". The Commission, in its report 96/ to the General Assembly, submitted its conclusions, without applying the procedure provided in its Statute for either progressive development or codification.

59. In other instances the Commission remained silent as to whether a task it undertook or a report it submitted to the General Assembly fell within the category of progressive development or of codification. It merely submitted its report or draft to the General Assembly and made no recommendations as to what action the General Assembly should take in relation to it. Such cases include the following topics: the formulation of the Nürnberg principles 97/ pursuant to a request by the General Assembly under resolution 177 (II); reservations to multilateral conventions, 98/ a question referred to the Commission for study by General Assembly resolution 478 (V); the question of defining aggression, 99/ referred to the Commission by General Assembly resolution 378 B (V); and the draft Code of Offences against the Peace and Security of Mankind, 100/ submitted by the Commission in pursuance of General Assembly resolution 177 (II).

90/ G A (IV), Suppl. No. 10 (A/925), part II.

91/ See para. 11 above.

92/ G A (IV), Suppl. No. 10 (A/925), para. 53.

93/ G A (IV), Suppl. No. 10 (A/925), para. 53.

94/ G A (IV), Suppl. No. 10 (A/925), para. 53.

95/ See para. 11 above.

96/ G A (V), Suppl. No. 12 (A/1316), part IV.

97/ G A (V), Suppl. No. 12 (A/1316), part III. See also para. 11 above.

98/ G A (VI), Suppl. No. 9 (A/1858), chap. II. See also para. 12 above.

99/ G A (VI), Suppl. No. 9 (A/1858), chap. III. See also para. 12 above.

100/ G A (IX), Suppl. No. 9, chap. III. See also para. 11 above.

ANNEX

Resolutions of the General Assembly mentioned
in the present study

<u>Title</u>	<u>Resolution No.</u>	<u>Quoted passages or summaries of provisions which made reference to Article 13 (1) (a) or to the development or codification of international law</u>
Progressive Development of International Law and its Codification <u>/Establishment of a Committee/</u>	94 (I)	"Recognizes the obligation laid upon it by Article 13, paragraph 1, sub-paragraph a, of the Charter to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification;"
Teaching of international law	176 (II)	<p>"<u>Considering</u> that it is necessary to further the aims of the General Assembly's resolution 94 (I) ..., which initiated the fulfilment of Article 13, paragraph 1, sub-paragraph a, of the Charter, regarding the development of international law and its codification;</p> <p>"<u>Considering</u> that one of the most effective means of furthering the development of international law consists in promoting public interest in this subject and using the media of education and publicity to familiarize the peoples with the principles and rules that govern international relations;</p> <p>"<u>Considering</u> that greater knowledge of and fuller information on the aims, purposes and structure of the United Nations constitute another positive method of assisting the development of international law, of which the United Nations is the main instrument,"</p>
Affirmation of the Principles of International Law recognized by the Charter of the Nurnberg Tribunal	95 (I) a/	"Recognizes the obligation laid upon it by Article 13, paragraph 1, sub-paragraph a, of the Charter, to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification;"

a/ See also G A resolutions 488 (V) and 897 (IX).

<u>Title</u>	<u>Resolution No.</u>	<u>Quoted passages or summaries of provisions which made reference to Article 13 (1) (a) or to the development or codification of international law</u>
Formulation of the principles recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal	177 (II)	(No reference)
Need for greater use by the United Nations and its organs of the International Court of Justice	171 (II)	<p>"Considering that it is a responsibility of the United Nations to encourage the progressive development of international law;</p> <p>"Considering that it is of paramount importance that the interpretation of the Charter of the United Nations and the constitutions of the specialized agencies should be based on recognized principles of international law;</p> <p>"...</p> <p>"Considering that it is also of paramount importance that the Court should be utilized to the greatest practicable extent in the progressive development of international law, both in regard to legal issues between States and in regard to constitutional interpretation,"</p>
Establishment of an International Law Commission	174 (II) b/	"Recognizing the need for giving effect to Article 13, paragraph 1, sub-paragraph a, of the Charter, stipulating that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification;"
Draft Declaration on the Rights and Duties of States	38 (I)	"To refer the said Declaration to the Committee established by the General Assembly during the present session to study the methods of codification of international law,"

b/ See also G A resolutions 484 (V), 485 (V), 486 (V) and 600 (VI).

<u>Title</u>	<u>Resolution No.</u>	<u>Quoted passages or summaries of provisions which made reference to Article 13 (1) (a) or to the development or codification of international law</u>
Preparation by the Secretariat of the work of the International Law Commission	175 (II)	<p>"Considering that, in the interval between the first and the second sessions of the General Assembly, the Secretariat of the United Nations contributed to the study of problems concerning the progressive development of international law and its codification,</p> <p>"Instructs the Secretary-General to do the necessary preparatory work for the beginning of the activity of the International Law Commission, particularly with regard to the questions referred to it by the second session of the General Assembly, such as the draft declaration of the rights and duties of States."</p>
Draft declaration on the rights and duties of States	178 (II)	(The General Assembly requested the Secretary-General to undertake the necessary preparatory work according to the terms of resolution 175 (II), entrusted further study of this problem to the International Law Commission and instructed the Commission to prepare a draft declaration.)
Draft Declaration on Rights and Duties of States	375 (IV) c/	"Considering that it is a responsibility of the United Nations, and more especially of the General Assembly, under Article 13 of the Charter, to encourage the progressive development of international law and its codification,"
Approval of part I d/ of the report of the International Law Commission covering its first session	375 (IV)	"Noting from part I of the report of the International Law Commission covering its first session that the Commission has dealt, within its competence, with the studies entrusted to it by the General Assembly in relation to the codification and progressive development of international law,"

c/ See also G A resolution 596 (VI).

d/ Part I consists of the following chapters: I. Introduction; II. Survey of international law and selection of topics for codification; III. Formulation of the Murnberg principles and preparation of a draft code of offences against the peace and security of mankind; IV. Study of the question of international criminal jurisdiction; V. Ways and means for making the evidence of customary international law more readily available; VI. Co-operation with other bodies, and VII. Miscellaneous decisions.

<u>Title</u>	<u>Resolution No.</u>	<u>Quoted passages or summaries of provisions which made reference to Article 13 (1) (a) or to the development or codification of international law</u>
Recommendation to the International Law Commission to include the régime of territorial waters in its list of topics to be given priority	374 (IV) <u>e/</u>	(Mentioned as a topic for codification)
Reservations to multilateral conventions	478 (V) <u>f/</u>	"Invites the International Law Commission: (a) in the course of its work on the codification of the law of treaties, to study the question of reservations to multilateral conventions both from the point of view of codification and from that of the progressive development of international law;"
Prevention and punishment of the crime of genocide: B. Study by the International Law Commission of the question of an international criminal jurisdiction	260 B (III)	(No reference)
International criminal jurisdiction	489 (V)	(No reference)
International criminal jurisdiction	687 (VII)	(No reference)
Duties of States in the event of the outbreak of hostilities	378 B (V)	(No reference) (The General Assembly referred the question of defining aggression to the International Law Commission for examination)
Question of defining aggression	599 (VI)	"Considering that, although the existence of the crime of aggression may be inferred from the circumstances peculiar to each particular case, it is nevertheless possible and desirable, with a view to ensuring international peace and security and to developing international criminal law, to define aggression by reference to the elements which constitute it,"

e/ See also G A resolutions 798 (VIII) and 899 (IX).

f/ See also G A resolution 598 (VI).

<u>Title</u>	<u>Resolution No.</u>	<u>Quoted passages or summaries of provisions which made reference to Article 13 (1) (a) or to the development or codification of international law</u>
Question of defining aggression	688 (VII)	"Considering that continued and joint efforts shall be made to formulate a generally acceptable definition of aggression, with a view to promoting international peace and security and to developing international law."
Question of defining aggression	895 (IX)	(No reference)
Ways and means for making the evidence of customary international law more readily available ^{g/}	487 (V) 602 (VI) 686 (VII)	
Request to the International Law Commission to give priority to the codification of the topic "Diplomatic intercourse and immunities"	685 (VII)	
Request for the codification of the principles of international law governing State responsibility	799 (VIII)	
Arbitral procedure	797 (VIII)	"Considering that the said draft ^{g/} on arbitral procedure prepared by the International Law Commission/ includes certain important elements with respect to the progressive development of international law on arbitral procedure,"
Elimination or reduction of future statelessness	896 (IX)	"Considering that the International Law Commission included the topic 'Nationality, including statelessness' in its list of topics of international law provisionally selected for codification,"

^{g/} Pursuant to article 24 of the Statute of the International Law Commission which was under the general heading "Codification of international law".

<u>Title</u>	<u>Resolution No.</u>	<u>Quoted passages or summaries of provisions which made reference to Article 13 (1) (a) or to the development or codification of international law</u>
International technical conference on the conservation of the living resources of the sea	900 (IX)	(No reference)

ARTICLE 13 (1) (b) AND (2)

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TEXT OF ARTICLE 13 (1) (b) and (2)

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

.....

(b) promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

INTRODUCTORY NOTE

1. Article 13 (1) (b) and (2) of the Charter sets forth, in part directly and in part by reference to other Articles of the Charter, the functions and powers of the General Assembly in the fields of economic and social activity and of human rights.

2. Under these provisions of the Article the Assembly is empowered to initiate studies and to make recommendations, for the purpose of (1) promoting international co-operation in the economic, social, cultural, educational and health fields and (ii) assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. In addition, Article 13 (2) refers to the further responsibilities, functions and powers with respect to these matters, which are set forth in Chapters IX and X.

3. In considering the practice of the Assembly relative to the application of Article 13 (1) (b), it is necessary to bear in mind the close parallel between Article 13 (1) (b) and Article 55. The latter is the first of six Articles under the general heading "International Economic and Social Cooperation" ^{1/} and refers to the Purposes of the United Nations as a whole in these fields.

4. A comparison of the provisions contained in Article 13 (1) (b) with those in Article 55 shows that, despite slight differences in wording, the objectives are the same, but that the latter Article contains a more specific description of the particular areas in which measures of international co-operation should be promoted. By reason of this, the study on Article 55 covers the substance of the question of international co-operation in the fields of economic and social activity and of human rights, whereas this study on Article 13 (1) (b) is limited to indicating the range and types of action taken by the General Assembly in the exercise of its functions to initiate studies and make recommendations for the purpose of furthering economic and social co-operation and assisting in the realization of human rights.

^{1/} Article 1, which sets forth the Purposes of the United Nations, also refers to this aspect of international co-operation.

5. The competence of the General Assembly to deal with certain subjects in the fields of economic and social activity and of human rights has been the subject of some discussion in which occasional reference has been made to Article 13 together with other Articles of the Charter. 2/ The constitutional discussions on these occasions centred mainly on the provisions of Articles 2 (7) and 107, and have been treated in this Repertory under those Articles.

6. Action taken by the General Assembly in these fields has been of two types: the Assembly has initiated studies under the provisions of Article 13 (1) (b), and it has made recommendations. The two types of action are treated separately in the Summary of Practice, under sections A and B respectively.

7. Section A is supplemented by a tabulation, appended as an annex, which presents a list of the studies initiated by the Assembly and entrusted to the Economic and Social Council and its subsidiary organs, to the Secretary-General, to other bodies, and individual specialized agencies, to several bodies jointly, and to Member States.

8. Section B deals with the terminology used by the Assembly in making its recommendations, the addressees of the recommendations, their subject matter and the types of action envisaged in them. No attempt has been made to enumerate exhaustively the relevant recommendations of the Assembly; instead it is intended to present, through appropriate examples, a balanced picture of the variety of the recommendations which have been made by the General Assembly.

9. The study of the application of Article 13 (1) (b) draws upon the resolutions adopted by the General Assembly on the recommendation of the Second and Third Committees, sitting separately or as a joint Committee. 3/ Many of the resolutions adopted by the Assembly on the recommendation of the Fourth Committee which relate to economic, social or human rights problems in Non-Self-Governing or Trust Territories have been dealt with in this Repertory under the Articles in Chapters XI and XII of the Charter.

10. In connexion with certain items referred to in the First and Ad Hoc Political Committees, some consideration was given to their economic, social and human rights implications. However, only with respect to one item - the question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa - did a resolution adopted by the Assembly on the recommendation of these Committees contain a reference to Article 13.

2/ Examples are provided by the discussions in connexion with the following agenda items:

"Having regard to the provisions of the Charter and of the peace treaties, the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms, including questions of religious and civil liberties, with special reference to recent trials of church leaders: item proposed by Bolivia and by Australia." (G A (III/2), Plen., 190th mtg., p. 24; 201st mtg., p. 256; 202nd mtg., pp. 246 and 248; 203rd mtg., p. 270.)

"Complaints of failure on the part of the Union of Soviet Socialist Republics to repatriate or otherwise account for prisoners of war detained in Soviet territory: reports of the Third Committee (A/1690) and the Fifth Committee (A/1718)." (G A (V), Plen., vol. I, 325th mtg., pp. 668 and 669.)

3/ Resolution 275 (III) dealing with the study of the social problems of the aboriginal populations and of other under-developed social groups of the American continent, was recommended by the Ad Hoc Political Committee, but the item had initially been assigned to the Third Committee.

11. For the consideration of the further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in Article 13 (1) (b) - which, as stated in Article 13 (2), are set forth in Chapters IX and X - reference is made to the studies in this Repertory under the Articles of those Chapters. ^{4/}

SUMMARY OF PRACTICE

A. Studies initiated by the General Assembly

12. Studies have been initiated by the General Assembly under Article 13 (1) (b) at each of the eight regular sessions reviewed here. They have been tabulated in an annex under the following headings:

- I. Studies requested from the Economic and Social Council and its subsidiary organs;
- II. Studies requested from the Secretary-General;
- III. Studies requested from other bodies and individual specialized agencies;
- IV. Studies requested from several bodies jointly;
- V. Studies requested from Member States.

In each case, the number, the title and the pertinent provision of the resolution have been included.

B. Recommendations of the General Assembly

13. Of the 806 resolutions adopted by the General Assembly during its first eight regular and two special sessions, 180 have been submitted by the Second and Third Committees, sitting separately or as a joint Committee. Most of these have included recommendations which, although bearing upon specific provisions contained in Chapters IX and X of the Charter, also constitute an application of Article 13 (1) (b) inasmuch as their objective was promotion of international co-operation in the economic, social and related fields or assistance in the promotion of human rights or fundamental freedoms.

Terminology

14. The General Assembly has not followed a consistent pattern in its use of terminology. While the word "recommends" has been used in a great number of resolutions, several other wordings have also been employed. The following terms

^{4/} Principal questions are dealt with in this Repertory under the following Articles:

Under Articles 60 and 66 (1) and (2), relative responsibilities of the General Assembly and the Economic and Social Council for the discharge of the functions of the Organization set forth in Chapter IX.

Under Article 61, election by the General Assembly of members of the Economic and Social Council.

Under Article 62 (3), preparation of conventions for submission to the General Assembly.

Under Article 66 (2), performance of services.

Under Article 59, creation of new specialized agencies.

Under Articles 57 and 63 (1), establishment of relationships with specialized agencies.

Under Articles 58 and 63 (2), co-ordination of activities of specialized agencies.

have been employed by the Assembly: "urges", "emphasizes", "requests", "invites", "affirms", "reaffirms the principle", "appeals", "reiterates", "expresses its deep concern", "expresses the earnest hope", "calls upon", "draws the attention of" and "draws renewed attention to".

Addressees

15. Most of the recommendations 5/ made by the General Assembly under Article 13 (1) (b) have been addressed to States, Governments, the Economic and Social Council and its commissions, the Secretary-General and the specialized agencies.

16. Recommendations to States have been addressed to States Members of the United Nations, States members of the specialized agencies, States in general and non-member States. Certain recommendations have been addressed to categories or groups of States interested in or affected by a particular problem.

17. Recommendations to Governments have been addressed to all Governments of Member States or to a specific group of Governments, such as the Governments of under-developed countries. In one instance, a recommendation was addressed to "all governments and authorities". 6/

18. Certain recommendations have been addressed to all countries or to groups of countries.

19. Recommendations have also been addressed to subsidiary organs of the United Nations, inter-governmental organizations, non-governmental organizations, voluntary agencies and, in a certain instance, to "peoples of all countries". 7/

5/ Examples of recommendations made have been as follows:

<u>Addressee concerned</u>	<u>General Assembly resolution</u>
States	314 (IV)
Each Government.	308 (IV)
Economic and Social Council.	732 (VIII)
Commissions of the Economic and Social Council	738 (VIII)
Secretary-General.	119 (II)
Specialized agencies	311 A (IV)
States Members of the United Nations	211 A (III)
States members of the specialized agencies	724 B (VIII)
States in general.	423 (V)
Non-member States.	211 A (III)
States interested in or affected by a particular problem.	538 B (VI)
Governments of Member States	524 (VI)
A specific group of Governments.	401 (V)
All countries.	45 (I)
Groups of countries.	45 (I)
Subsidiary organs of the United Nations.	722 (VIII)
Inter-governmental organizations	46 (I)
Non-governmental organizations	639 (VII)
Voluntary agencies	57 (I)
Private persons.	536 (VI)
6/ Resolution 741 (VIII).	
7/ Resolution 215 (III).	

20. A few recommendations have taken the form of general statements 8/ and appeals have been addressed to "private persons".

Subjects dealt with in the recommendations

21. The General Assembly has made recommendations on most of the matters dealt with by the United Nations in the fields of economic and social activity and of human rights. These matters have related to such topics as standards of living, 9/ full employment, 10/ inflationary pressures and measures to combat inflation, 11/ the world economic situation, 12/ the question of world economic surveys, 13/ conditions for the flow of private foreign capital to under-developed countries, 14/ fair and equitable international prices for primary commodities, 15/ financing of economic development of under-developed countries, 16/ the question of establishing an international mechanism for financing productive private enterprises, 17/ national income data, 18/ organization and collection of economic data, 19/ training of apprentices and technical workers, 20/ technical assistance, 21/ commercial agreements and policies, 22/ industrialization, 23/ integrated economic development, 24/ land reform, 25/ methods to increase world productivity, 26/ development of arid land, 27/ development of natural resources, 28/ the right to exploit freely natural wealth and resources, 29/ food and famine, 30/ wastage of food, 31/ international commodity problems, 32/ statistics on living standards, 33/ preparation of a report on the world social situation, 34/ a programme of concerted practical action in the social field of the United Nations and

8/ See, for example, resolution 518 (VI).

9/ Resolution 527 (VI).

10/ Resolution 308 (IV).

11/ Resolution 527 (VI).

12/ Resolution 406 (V).

13/ Resolution 118 (II).

14/ Resolution 626 (VII).

15/ Resolution 623 (VII).

16/ Resolution 520 A (VI).

17/ Resolution 724 C (VIII).

18/ Resolution 403 (V).

19/ Resolution 407 (V).

20/ Resolution 201 (III).

21/ Resolution 200 (III).

22/ Resolution 523 (VI).

23/ Resolution 521 (VI).

24/ Resolution 623 (VII).

25/ Resolution 625 (VII).

26/ Resolution 522 (VI).

27/ Resolution 402 (V).

28/ Resolution 523 (VI).

29/ Resolution 626 (VII).

30/ Resolution 525 (VI).

31/ Resolution 202 (III).

32/ Resolution 623 (VII).

33/ Resolution 527 (VI).

34/ Resolution 280 (III).

the specialized agencies, 35/ protection of migrant and immigrant labour, 36/ internal migration, 37/ recognition and enforcement abroad of maintenance obligations, 38/ housing and town and country planning, 39/ child welfare, 40/ suppression of traffic in persons, 41/ suppression of the circulation of, and traffic in, obscene publications, 42/ international control of narcotic drugs, 43/ limitation of the manufacture and regulation of the distribution of new synthetic drugs capable of producing addiction, 44/ the problem of the coca leaf, 45/ relief needs after the termination of the United Nations Relief and Rehabilitation Administration (UNRRA), 46/ economic reconstruction of devastated areas, 47/ rehabilitation of children and adolescents of countries which were victims of aggression, 48/ the question of refugees, 49/ the solution of the problem of prisoners of war of the Second World War, 50/ assistance to Palestine refugees, 51/ relief and rehabilitation of Korea, 52/ slavery 53/ and human rights. 54/

Types of action envisaged in the recommendations

22. Recommendations to Governments and States have envisaged a variety of actions, for example: adoption of certain measures and taking of steps in matters falling within the economic and social fields, 55/ signing of international agreements, 56/ participation in certain relief programmes, 57/ implementation of previous recommendations of the General Assembly, 58/ submission of reports and information, 59/ acceptance of the constitution of a specialized agency, 60/ refraining from taking certain actions, 61/ accession to a convention, 62/ ratification of a convention, 63/

- 35/ Resolution 535 (VI).
- 36/ Resolution 315 (IV).
- 37/ Resolution 733 (VIII).
- 38/ Resolution 734 (VIII).
- 39/ Resolution 537 (VI).
- 40/ Resolution 57 (I).
- 41/ Resolution 317 (IV).
- 42/ Resolution 126 (II).
- 43/ Resolution 54 (I).
- 44/ Resolution 211 (III).
- 45/ Resolution 134 (II).
- 46/ Resolution 48 (I).
- 47/ Resolution 46 (I).
- 48/ Resolution 57 (I).
- 49/ Resolution 8 (I).
- 50/ Resolution 427 (V).
- 51/ Resolution 212 (III).
- 52/ Resolution 410 (V).
- 53/ Resolution 278 (III).
- 54/ See in this Repertory under Article 55.
- 55/ Resolutions 45 (I), 525 (VI) and 731 (VIII).
- 56/ Resolution 54 (I).
- 57/ Resolution 57 (I).
- 58/ Resolution 119 (II).
- 59/ Resolution 127 (II).
- 60/ Resolution 131 (II).
- 61/ Resolutions 136 (II) and 424 (V).
- 62/ Resolution 277 C (III).
- 63/ Resolution 279 (III).

making of contributions to voluntary programmes of the United Nations, 64/ co-operation with the Secretary-General in carrying out a particular task, 65/ prompt payment of contributions to the specialized agencies, 66/ full participation in the specialized agencies, 67/ co-operation in a particular programme, 68/ conclusion of bilateral or multilateral agreements in a certain field 69/ and acting in conformity with international agreements. 70/

23. Recommendations to the Economic and Social Council, other than those initiating studies which are treated under A above, have called for the following types of action: reference of a particular item to one of the functional or regional commissions, 71/ convocation of an international conference, 72/ application of certain principles to the consideration of a particular question, 73/ making of recommendations to the General Assembly, the specialized agencies concerned and Members of the United Nations on a particular subject, 74/ reporting to the General Assembly on steps taken to give effect to the recommendations of the Assembly and of the Economic and Social Council on a particular matter, 75/ the establishment of a subsidiary body, 76/ consideration of certain facts in the distribution of membership in subsidiary organs of the Economic and Social Council, 77/ inclusion in the calendar of conferences for a particular year of a session of a particular subsidiary organ, 78/ participation of Member States in the work of the Economic and Social Council, 79/ giving of priority to the consideration of a particular item, 80/ paying attention to specific aspects of questions under its consideration, 81/ encouragement of governmental action to give effect to recommendations of the General Assembly to Member States, 82/ reporting to the General Assembly on a particular problem 83/ and continuation of the work in a particular field and prolongation of the mandate of a subsidiary organ. 84/

24. Among the recommendations to the Secretary-General, several have requested him to take actions of a procedural character, for example: to include an item in the agenda of a particular organ, 85/ to invite Members or specialized agencies to submit their views concerning a particular subject, 86/ to transmit reports, drafts,

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- 64/ Resolutions 304 (IV) and 318 (IV).
 - 65/ Resolution 405 (V).
 - 66/ Resolution 411 (V).
 - 67/ Resolution 414 (V).
 - 68/ Resolutions 428 (V) and 430 (V).
 - 69/ Resolutions 623 (VIII) and 624 (VII).
 - 70/ Resolution 741 (VIII).
 - 71/ Resolution 43 (I).
 - 72/ Resolution 59 (I).
 - 73/ Resolution 60 (I).
 - 74/ Resolution 118 (II).
 - 75/ Resolution 119 (II).
 - 76/ Resolutions 46 (I) and 199 (III).
 - 77/ Resolution 207 (III).
 - 78/ Resolutions 419 (V) and 420 (V).
 - 79/ Resolution 208 (III).
 - 80/ Resolutions 306 (IV) and 736 A (VIII).
 - 81/ Resolutions 308 (IV) and 406 (V).
 - 82/ Resolution 523 (VI).
 - 83/ Resolution 525 (VI).
 - 84/ Resolution 532 (VI).
 - 85/ Resolution 282 (III).
 - 86/ Resolutions 421 H (V) and 543 (VI).

resolutions or records to Governments, United Nations organs, specialized agencies or other parties 87/ and to thank a subsidiary organ for the work it has performed. 88/

25. In many cases, recommendations to the Secretary-General have contained a request for a particular study 99/ or for a report on a particular subject. 90/ In a few cases, the recommendations have involved instructions to perform certain functions or to render certain services to Governments. The recommendations dealing with technical assistance 91/ and with the assumption of functions previously exercised by the League of Nations under certain protocols 92/ are typical of this kind of recommendation. Some of the recommendations have also dealt with questions of co-ordination of the policies and activities of the specialized agencies and were related to the agreements between the United Nations and each of the specialized agencies. 93/

26. Other recommendations have called upon the Secretary-General to: prepare material relating to certain fields for the use of Governments, 94/ call the attention of a subsidiary organ to the necessity of giving due consideration to certain items, 95/ take steps for convening a particular conference, 96/ assist the Economic and Social Council in carrying out certain recommendations of the General Assembly, 97/ place emphasis on specific aspects of particular problems under consideration, 98/ provide assistance and facilities to a subsidiary organ in the discharge of its duties, 99/ submit a programme of action in a particular field, 100/ request information from Governments, 101/ prepare drafts for submission to Governments and to the Economic and Social Council, 102/ continue to co-operate with the specialized agencies in a particular programme, 103/ report to the Economic and Social Council on the implementation of a resolution of the General Assembly, 104/ take steps for the implementation of a particular resolution 105/ and to report to the General Assembly on action taken as a result of a resolution. 106/

27. Most of the recommendations to the specialized agencies have been included in resolutions adopted by the General Assembly on the recommendation of the Joint Second and Third Committee or of the Joint Second, Third and Fifth Committee, and have dealt with questions of co-ordination of the policies and activities of the specialized

87/ Resolutions 426 (V), 622 (VII) and 724 B (VIII).

88/ Resolution 632 (VII).

89/ See paras. 13-15 above.

90/ Resolution 524 (VI).

91/ Resolution 200 (III).

92/ Resolution 54 (I).

93/ See in this Repertory under Articles 57, 58, 59, 63 and 64.

94/ Resolution 407 (V).

95/ Resolution 408 (V).

96/ Resolutions 429 (V) and 519 A (VI).

97/ Resolution 520 A (VI).

98/ Resolutions 520 B (VI), 625 B (VII) and 633 (VII).

99/ Resolution 427 (V).

100/ Resolution 736 A (VIII).

101/ Resolution 740 (VIII).

102/ Resolution 319 A (IV).

103/ Resolution 624 (VII).

104/ Resolution 200 (III).

105/ Resolution 212 (III).

106/ Resolution 212 (III).

agencies 107/ or have been related to the implementation of the agreements between the United Nations and each of the agencies. 108/

28. The specialized agencies have also been requested to undertake, independently or jointly with other organs, certain studies as noted in A above.

29. Other actions envisaged in the recommendations to the specialized agencies have included the following:

30. All the specialized agencies concerned with the problems of economic reconstruction of devastated areas have been urged to take all possible steps, within their respective fields of activity, which might lead to the early solution of those problems. 109/

31. The United Nations Educational, Scientific and Cultural Organization (UNESCO), has been asked to consider certain principles in its study of the question of the translation of the classics. 110/

32. The International Labour Organisation (ILO), has been recommended to pursue urgently, in collaboration with the United Nations and in conformity with the resolution of the International Labour Conference concerning international machinery for safeguarding trade union rights and freedom of association, the study of the control of their practical application. 111/

33. UNESCO has been invited to assist Members of the United Nations, at their request, in the implementation of a programme for the teaching of the Purposes and Principles, the structure and activities of the United Nations in the schools of Member States. 112/

34. All specialized agencies have been recommended to give further and urgent consideration to the whole problem of the economic development of under-developed countries in all its aspects. 113/

35. The ILO has been requested to do all in its power to expedite the ratification and application of a convention dealing with migration for employment. 114/

36. The specialized agencies concerned have been asked to facilitate the work of the group of experts to be appointed by the Secretary-General to prepare a report on the national and international measures required to reduce unemployment and under-employment in under-developed countries. 115/

37. The specialized agencies have been asked to take all possible measures to ensure that technical assistance rendered was consistent with, and made the maximum contribution to, integrated plans of economic and social development. 116/

107/ See in this Repertory under Article 58.

108/ See in this Repertory under Articles 57, 59 and 64.

109/ Resolution 46 (I).

110/ Resolution 60 (I).

111/ Resolution 128 (II).

112/ Resolution 137 (II).

113/ Resolution 198 (III).

114/ Resolution 315 (IV).

115/ Resolution 408 (V).

116/ Resolution 519 A (VI).

38. The International Bank for Reconstruction and Development (Bank) has been invited to continue to expand its lending operations, keeping in mind the special situation of under-developed countries with low levels of annual per capita income. 117/

39. The Food and Agriculture Organization (FAO), ILO and UNESCO have been urged to accord high priority to certain recommendations of the Economic and Social Council on the question of land reform, and to be prepared, upon the request of Governments, to make specific studies and recommendations for the economic and social betterment of the agricultural population of their countries. 118/

40. The specialized agencies, in particular the Bank, have been requested to continue their active co-operation in the equipment, transfer and technical training of groups of emigrants in the countries of emigration or immigration or both, by rendering such economic, financial or administrative assistance as was consistent with their respective constitutional provisions. 119/

41. The ILO has been asked to give early consideration to the report of the Ad Hoc Committee on Forced Labour. 120/

42. The Bank has been requested to (a) analyse in detail the questions raised and the views expressed by Governments and non-governmental institutions concerning the methods of furnishing the capital for an international finance corporation, its functions and operations; (b) conduct its consultations in a more intensive manner with regard to the question of the creation of an international finance corporation and with regard to the prospects of financial support for it; and (c) report to the Economic and Social Council on the above-mentioned subjects. 121/

43. Recommendations have been directly related to the terms of reference of the bodies concerned; for instance, the Conference on Freedom of Information has been recommended to study certain measures as being relevant to the discussion of certain items of its provisional agenda; 122/ the International Refugee Organization has been urged to contribute to the relief of Palestine refugees; 123/ the United Nations International Children's Emergency Fund (UNICEF) has been requested to assist in the conduct of national campaigns for the benefit of children; 124/ the Technical Assistance Board has been instructed to be mindful of the economic unity and independence of Libya when giving technical assistance to that country; 125/ the Agent General of the United Nations Korean Reconstruction Agency has been given a series of recommendations for carrying out his functions; 126/ the Ad Hoc Commission on Prisoners of War has been requested to seek from the Governments or authorities concerned full information regarding such prisoners; 127/ the Negotiating Committee for Extra-Budgetary Funds has received a series of recommendations within the scope of its terms of reference; 128/

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- 117/ Resolution 520 C (VI).
118/ Resolution 524 (VI).
119/ Resolution 624 (VIII).
120/ Resolution 740 (VIII).
121/ Resolution 724 C (VIII).
122/ Resolution 127 (II).
123/ Resolution 212 (III).
124/ Resolution 215 (III).
125/ Resolution 398 (V).
126/ Resolution 410 A (V).
127/ Resolution 427 (V).
128/ Resolutions 621 (VII) and 722 (VIII).

the committee of experts set up under Economic and Social Council resolution 416 A (XIV) has been requested to consider the feasibility of financing programmes of agrarian reform and development projects designed to implement programmes of agrarian reform as one of the important fields of activity for the proposed special fund for grants-in-aid and for low-interest, long-term loans. 129/ A general recommendation to "United Nations bodies studying the problems of freedom of information" has been made in resolution 634 (VII), asking them to consider appropriate measures for avoiding the harm done to international understanding by the dissemination of false and distorted information.

44. Recommendations to non-governmental organizations, voluntary agencies and private persons have been very few in number and have been aimed at requesting contributions to certain United Nations programmes; for instance, non-governmental organizations interested in migration have been requested to give to refugees under the mandate of the United Nations High Commissioner for Refugees every possible opportunity in and benefit from projects to promote migration; 130/ voluntary agencies have been requested to give their generous support to UNICEF; 131/ and private persons have been asked to contribute to UNICEF. 132/

45. In one case, a recommendation has been addressed to "information media" to co-operate in the dissemination of information concerning the activities of UNICEF. 133/

129/ Resolution 625 A (VII).

130/ Resolution 639 (VII).

131/ Resolution 57 (I).

132/ Resolution 536 (VI).

133/ Resolution 641 (VII).

ANNEX

Tabulation of studies initiated by the General Assembly under Article 13 (1) (b)

I. Studies requested from the Economic and Social Council and its subsidiary organs

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
8 (I)	Question of Refugees	"(a) Decides to refer this problem to the Economic and Social Council for thorough examination in all its aspects under item 10 of the agenda for the first session of the Council and for report to the second part of the first session of the General Assembly;"
24 (I)	Transfer of certain Functions, Activities and Assets of the League of Nations	"1. Requests the Economic and Social Council to survey the functions and activities of a non-political character which have hitherto been performed by the League of Nations in order to determine which of them should, with such modifications as are desirable, be assumed by organs of the United Nations or be entrusted to specialized agencies which have been brought into relationship with the United Nations."
43 (I)	Draft Declaration on Fundamental Human Rights and Freedoms	"Resolves therefore to refer the draft Declaration on Fundamental Human Rights and Freedoms to the Economic and Social Council for reference to the Commission on Human Rights for consideration by the Commission in its preparation of an international bill of rights;"
48 (I)	Relief Needs after the termination of UNRRA (United Nations Relief and Rehabilitation Administration)	"8. (a) <u>Directs</u> the Secretary-General to consider the ways and means of collecting and utilizing contributions, from persons, organizations and peoples all over the world, equivalent to the earnings of one day's work, for the purpose of helping to meet relief needs during 1947; and to report on the results of such consideration to Member Governments and to the Economic and Social Council at the earliest possible date; "(b) Requests the Economic and Social Council to study the report made by the Secretary-General and to take whatever action it may deem appropriate in regard to this matter."

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
52 (I)	Provision of expert advice by the United Nations to Member States	"Decides to refer to the Economic and Social Council for study the question of providing effective ways and means for furnishing, in co-operation with the specialized agencies, expert advice in the economic, social and cultural fields to Member nations who desire this assistance."
53 (I)	Housing and Town Planning	"Decides to recommend to the Economic and Social Council that it instruct the appropriate Commissions to expedite their study of housing problems, with special reference to the organization and unification of international exchanges of information relating, in particular, to town planning principles, building techniques and the climatic, economic and financial, legal and legislative aspects of housing and town planning questions;"
118 (II)	Reports on world economic conditions and trends	"2. <u>Recommends</u> to the <u>Economic and Social</u> Council "(a) That it consider a survey of current world economic conditions and trends annually, and at such other intervals as it considers necessary, in the light of its responsibility under Article 55 of the Charter to promote the solution of international economic problems, higher standards of living, full employment and conditions of economic and social progress and development,"
120 (II)	Study of factors bearing upon the establishment of an economic commission for the Middle East	"6. <u>Invites</u> the Economic and Social Council to study the factors bearing upon the establishment of an economic commission for the Middle East."
134 (II)	Enquiry concerning the mastication of coca leaves	"Invites the Economic and Social Council, without wishing to prejudice the issue in any way, to consider it <u>/inquiry concerning the mastication of coca leaves/</u> with all the urgency that it deserves."

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
213 (III)	Declaration of old age rights	"Decides to communicate the draft declaration of old age rights submitted by the Argentine delegation (A/C.3/213/Rev.1) to the Economic and Social Council in order that the latter may make a study thereof and report thereon to the General Assembly at one of its future sessions."
217 B (III)	International Bill of Human Rights B. Right of petition	"Requests the Economic and Social Council to ask the Commission on Human Rights to give further examination to the problem of petitions when studying the draft covenant on human rights and measures of implementation, in order to enable the General Assembly to consider what further action, if any, should be taken at its next regular session regarding the problem of petitions."
217 (III)	International Bill of Human Rights C. Fate of minorities	"Refers to the Economic and Social Council the texts submitted by the delegations of the Union of Soviet Socialist Republics, Yugoslavia and Denmark on this subject contained in document A/C.3/207/Rev.2, and requests the Council to ask the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to make a thorough study of the problem of minorities, in order that the United Nations may be able to take effective measures for the protection of racial, national, religious or linguistic minorities."
278 (III)	The problem of slavery	"Requests the Economic and Social Council to study the problem of slavery at its next session."
280 (III)	World social and cultural situation	"Invites the Economic and Social Council to consider, on the basis of a report by its Social Commission and after consultation with the specialized agencies and the non-governmental organizations concerned, the possibility of drafting a general report on the world social and cultural situation."

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
306 (IV)	Economic development of under-developed countries	<p>"4. Recommends that the Economic and Social Council:</p> <p>"(a) Continue to give urgent attention to the problem of economic development of under-developed countries, giving due consideration to questions of a social nature which directly condition economic development;"</p> <p>"Recommends that, in the Economic and Social Council's forthcoming work and studies on economic development, further attention should be paid to such questions of international economic and commercial policy as may influence the process of development of the economies of under-developed countries, with a view to making recommendations to the General Assembly."</p> <p>"10. Requests the Economic and Social Council, during its consideration of full employment and economic development, to give attention to unemployment and under-employment, especially in under-developed countries and particularly in such critical fields as agriculture;"</p> <p>"1. Recommends that the Economic and Social Council, in giving further study to the problem of the financing of economic development, consider practical methods, conditions and policies for achieving the adequate expansion and steadier flow of foreign capital, both private and public, and pay special attention to the financing of non-self-liquidating projects which are basic to economic development;"</p> <p>"3. Requests the Economic and Social Council to study and report on the volume and distribution of national income in the under-developed countries,"</p>
307 (IV)	Economic development and international economic and commercial policy	
308 (IV)	Full employment	
400 (V)	Financing of economic development of under-developed countries	
403 (V)	Volume and distribution of national income in under-developed countries	

<u>Resolution</u> <u>No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
421 (v)	Draft International Covenant on Human Rights and measures of implementation: future work of the Commission on Human Rights	<p>"5. Calls upon the Economic and Social Council to request the Commission on Human Rights to study a federal State article and to prepare, for the consideration of the General Assembly at its sixth session, recommendations which will have as their purpose the securing of the maximum extension of the Covenant to the constituent units of federal States,</p> <p>"6. Calls upon the Economic and Social Council to request the Commission on Human Rights to study ways and means which would ensure the right of peoples and nations to self-determination, and to prepare recommendations for consideration by the General Assembly at its sixth session;</p> <p>".</p> <p>"8. Calls upon the Economic and Social Council to request the Commission on Human Rights to proceed with the consideration of provisions, to be inserted in the draft Covenant or in separate protocols, for the receipt and examination of petitions from individuals and organizations with respect to alleged violations of the Covenant; and to take into consideration in its studies of questions relating to petitions and implementation the proposals presented by Chile (A/C.3/L.81), Ethiopia and France (A/C.3/L.78), Israel (A/C.3/L.91, Rev.1) and Uruguay (A/C.3/L.93);"</p> <p>"1. Requests the Economic and Social Council to submit to the General Assembly at its seventh regular session a detailed plan for establishing as soon as circumstances permit, a special fund for grants-in-aid and for low-interest, long-term loans to underdeveloped countries for the purpose of helping them, at their request, to accelerate their economic development and to finance non-self-liquidating projects which are basic to their economic development;"</p>
520 A (VI)	Financing of economic development of under-developed countries	

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
520 B (VI)	Financing of economic development of under-developed countries	<p>"4. <u>Requests</u> the Economic and Social Council:</p> <p>"(a) To continue its studies of the problem of financing the economic development of under-developed countries;</p> <p>"(b) To study practical ways and means and comprehensive programmes for developing those countries;</p> <p>"(c) Within the framework of existing institutions, to pay particular attention to the problem presented by the financing of non-self-liquidating projects and, generally, by the establishment of a regular flow of international public capital;</p> <p>"(d) To consider additional methods of increasing the international flow of public funds for the economic development of under-developed countries."</p> <p><u>Requests</u> the Economic and Social Council:</p> <p>"(a) To promote studies of a programme of rapid industrialization of the under-developed countries, including the economic, social, fiscal, technical and organizational problems involved, and the role that the industrially advanced and under-developed countries have to play in such a programme."</p> <p><u>Requests</u> the Economic and Social Council:</p> <p>"(a) To study the varying ways in which the productivity of peoples everywhere can be increased by the application of existing scientific and technological knowledge;"</p>
521 (VI)	Integrated economic development	
522 (VI)	Methods to increase world productivity	

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
535 (VI)	Development and concentration of the efforts of the United Nations and the specialized agencies in the social field	"1. Calls upon the Economic and Social Council to examine in detail, and in the light of these considerations, the social activities undertaken by the United Nations together with the pertinent activities of the specialized agencies, in order to fulfill the various social tasks assigned to it by the Charter, "
522 A (VII)	Financing of economic development of under-developed countries	"3. Requests the Economic and Social Council to submit to the General Assembly at its eighth session the detailed plan referred to in paragraphs 1 and 2 of General Assembly resolution 520 A (VI), including recommendations for a special fund for grants-in-aid and for low-interest, long-term loans and to keep in mind that, especially in the present state of world tension, it is necessary to give special attention to the problem of international financing of economic and social development through international co-operation within the framework of the United Nations; "
529 (VII)	Draft protocol relating to the status of stateless persons	"2. Requests the Economic and Social Council to study, if possible at its sixteenth session, the text of the draft protocol and the comments received from interested governments and, in the light of these comments, to take whatever action seems useful in order that a text may be opened for signature after the Convention relating to the Status of Refugees has entered into force. "
533 (VII)	Information facilities in under-developed regions of the world	"Taking note with approval of the decision taken by the Economic and Social Council in resolution 442 E (XIV) of 13 June 1952 with regard to the study of ways and means of encouraging and developing independent domestic information enterprises, ".

<u>Resolution</u> <u>No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
403 (I)	Relief needs after the termination of UNRRA (United Nations Relief and Rehabilitation Administration)	<p>"1. Invites the Economic and Social Council to consider, in the light of the discussions at the seventh session of the General Assembly, the desirability of expanding the area of its study of this question;"</p> <p>II. <u>Studies requested from the Secretary-General</u></p> <p>"8.(a) Directs the Secretary-General to consider the ways and means of collecting and utilizing contributions, from persons, organizations and peoples all over the world, equivalent to the earnings of one day's work, for the purpose of helping to meet relief needs during 1947; and to report on the results of such consideration to Member Governments and to the Economic and Social Council at the earliest possible date;"</p> <p>"9. Requests the Economic and Social Council to study and report on the volume and distribution of national income in the under-developed countries,</p> <p>"</p> <p>"14. Directs the Secretary-General to prepare and submit to the Economic and Social Council a report to enable it to carry out the request made in paragraph 3 above;</p> <p>"5. Requests the Secretary-General, in carrying out studies relating to the present resolution, to avoid any duplication with the study recommended in paragraph 15 of Economic and Social Council resolution 294 D (XI) of 12 August 1950."</p>
405 (V)	Volume and distribution of national income in under-developed countries	

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
527 (VI)	Living standards of the working population	<p>"1. Requests the Economic and Social Council to continue to pay special attention to changes occurring in the standards of living of the working population, and to provide for the working out of adequate statistical methods and techniques so as best to facilitate the gathering and use of pertinent data in order to enable the Secretary-General to publish regular annual reports showing changes in absolute levels of living conditions in all countries and which would permit the study of this problem in the light of changing general economic conditions;"</p>
622 C (VII)	Financing of economic development of under-developed countries	<p>"1. <u>Requests the Secretary-General:</u></p> <p>"(a) To include in an early future world economic report an analysis of the international flow of private capital, including the volume and direction of that flow as well as the types and the fields of application of such investment and any reasons for the continued inadequacy of such investment in under-developed countries, so as to facilitate the efforts of the Economic and Social Council in its formulation of constructive proposals;"</p>
623 (VII)	Financing of economic development through the establishment of fair and equitable international prices for primary commodities and through the execution of national programmes of integrated economic development	<p>"4. Requests the Secretary-General to include in the study being prepared in compliance with Economic and Social Council resolution 427 (XIV) an estimate of the financial repercussions which changes in the terms of trade between primary commodities and capital goods and other manufactured articles produce on the national incomes of countries in the process of development, and an analysis of the distribution of those incomes;</p> <p>"5. Further requests the Secretary-General to prepare, for submission to the Economic and Social Council and to the General Assembly, a study on the impact of important synthetic products on the demand for natural primary products entering international trade;"</p>

Resolution
No.Title of resolutionPertinent provision

633 (VII)

Information facilities in under-
developed regions of the world

"Taking note with approval of the decision taken by the Economic and Social Council in resolution 442 E (XIV) of 15 June 1952 with regard to the study of ways and means of encouraging and developing independent domestic information enterprises,

"

"2. Requests the Secretary-General, in preparing the report called for under the above-mentioned resolution of the Council, also to elaborate a programme of concrete action which would include, inter alia,

"(a) Measures to reduce economic and financial obstacles in the field of information;

"(b) Measures to organize and promote among countries the exchange of information personnel;

"(c) Measures to assist the training of information personnel, the raising of professional and technical standards, the provision of fellowships and the holding of regional seminars;

"(d) All necessary measures in connexion with the supply of newsprint;"

III. Studies requested from other bodies and individual
specialized agencies

48 (I)

Relief needs after the termination
of UNRRA (United Nations Relief and
Rehabilitation Administration)

"1. Establishes a Special Technical Committee whose functions shall be:

"(a) To study the minimum import requirements of the basic essentials of life, particularly food and supplies for agricultural production of countries which the Committee believes might require assistance in the prevention of suffering or of economic retrogression which threatens the supply of these basic essentials;

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
127 (II)	False or distorted reports	<p>"(b) To survey the means available to each country concerned to finance such imports;</p> <p>"(c) To report concerning the amount of financial assistance which it believes may be required in the light of (a) and (b) above."</p> <p><u>Recommends to the Conference on Freedom of Information that it study, with a view to their co-ordination, the measures taken or advocated in this connexion by the various States /measures to combat the diffusion of false or distorted reports likely to injure friendly relations between States/, as being relevant to the discussion of items 2 (B) and 5 (c) of Section II of its provisional agenda."</u></p>
404 (V)	Economic development and international economic and commercial policy	<p><u>"Reaffirms General Assembly resolution 307 (IV) of 16 November 1949 concerning economic development and international economic and commercial policy, and requests that the group of experts, to be appointed by the Secretary-General under Economic and Social Council resolution 290 (XI), paragraph 13, after consultation with the Executive Secretary of the Interim Commission for the International Trade Organization, pay due attention to the influence that prevailing commercial policies have on national plans for the economic development of under-developed countries."</u></p>
616 (VII)	The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa	<p><u>"1. Establishes a Commission, consisting of three members, to study the racial situation in the Union of South Africa in the light of the Purposes and Principles of the Charter, with due regard to the provision of Article 2, paragraph 7, as well as the provisions of Article 1, paragraphs 2 and 3, Article 13, paragraph 1 b, Article 55 c and Article 56 of the Charter, and the resolutions of the United Nations on racial persecution and discrimination, and to report its conclusions to the General Assembly at its eighth session;"</u></p>

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
721 (VIII)	The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa	<p>"4. Requests the Commission /United Nations Commission/ on the Racial Situation in the Union of South Africa:</p> <p>"(a) To continue its study of the development of the racial situation in the Union of South Africa:</p> <p>"(i) With reference to the various implications of the situation for the populations affected;</p> <p>"(ii) In relation to the provisions of the Charter and, in particular, to Article 14;"</p>
	<u>IV. Studies requested from several bodies jointly</u>	
46 (I)	Economic Reconstruction of Devastated Areas	<p>"4. Recommends that the Economic and Social Council and its Commissions consider undertaking as soon as possible, in co-operation with the specialized agencies concerned, a general survey of raw material resources needed for the economic reconstruction of devastated areas, with a view to recommending the adoption of the necessary measures to increase and promote production and to facilitate transportation of those materials from the producing areas to the devastated areas;"</p>
60 (I)	Translation of the Classics	<p>"1. Decides to refer this question to the Economic and Social Council for reference to the United Nations Educational, Scientific and Cultural Organization for suitable action;</p> <p>"2. Recommends to the Economic and Social Council and to the United Nations Educational, Scientific and Cultural Organization the following principles to be considered in their study of this question: . . ."</p>

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
128 (II)	Trade union rights (freedom of association)	"Recommends to the International Labour Organisation on its tripartite basis to pursue urgently, in collaboration with the United Nations and in conformity with the resolution of the International Labour Conference concerning international machinery for safeguarding trade union rights and freedom of association, the study of the control of their practical application."
198 (III)	Economic development of under-developed countries	"7. Recommends that the Economic and Social Council and the specialized agencies give further and urgent consideration to the whole problem of the economic development of under-developed countries in all its aspects, and that the Economic and Social Council include in its report to the next regular session of the General Assembly (a) a statement on measures already devised by the Economic and Social Council and the specialized agencies, and (b) proposals for other measures designed to promote economic development and to raise the standards of living of under-developed countries;"
201 (III)	Training for apprentices and technical workers	"Requests the International Labour Organisation to: "Examine, in consultation with the United Nations and its regional economic commissions, the most appropriate arrangements for facilitating the admission to the world's centres of training for apprentices and technical workers of qualified persons from countries which suffer from a lack of technicians and specialists necessary to the development of their national economy;"
275 (III)	Study of the social problems of the aboriginal populations and other under-developed social groups of the American continent	"1. Recommends that, in accordance with Articles 13 and 62 of the Charter, the Economic and Social Council, with the assistance of the specialized agencies concerned, and in collaboration with the Instituto Indigenista Interamericano, study the situation of aboriginal populations and of the above-mentioned under-developed social groups of the States of the American continent requesting such help;

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
401 (V)	Land reform	<p>"2. Invites the Secretary-General to co-operate in such studies as are deemed necessary, in consultation with the interested Member States and taking into account the studies and conclusions of the Instituto Indigenista Interamericano, in compliance with the terms of this resolution."</p> <p>"1. Recommends that the Secretary-General, in co-operation with the Food and Agriculture Organization and in consultation with other appropriate specialized agencies, prepare and submit to the thirteenth session of the Economic and Social Council an analysis of the degree to which unsatisfactory forms of agrarian structure and, in particular, systems of land tenure, in the under-developed countries and territories impede economic development and thus depress the standards of living especially of agricultural workers and tenants and of small and medium-sized farmers;"</p>
402 (V)	Development of arid land	<p>"1. Recommends that the Secretary-General prepare, in collaboration with the competent specialized agencies, a report on the practical measures adopted for the study of the problems of arid zones and on the technical and financial means employed by the specialized agencies for this purpose;"</p>
407 (V)	Guides for organization and collection of economic data in under-developed countries	<p>"Recommends that the Secretary-General and the specialized agencies, taking into account the different institutional circumstances in the under-developed countries; prepare material which may serve to guide governments wishing to make use thereof and which should set forth:</p> <p>"(a) The types of data considered necessary to provide up-to-date information regarding the level of economic activity, employment, unemployment and under-employment;</p>

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
524 (VI)	Land reform	<p>"(b) Procedures and methods suitable for obtaining and presenting such data;</p> <p>"(c) Other suggestions relating to the organization of adequate government machinery necessary for obtaining the said data."</p> <p>"6. Urges the Secretary-General, the Food and Agriculture Organization of the United Nations, the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization, as recommended by the Economic and Social Council, to accord high priority to the recommendations in paragraphs 5 and 6 of Council resolution 370 (XIII); and to be prepared, upon the request of governments, to make specific studies and recommendations for the economic and social betterment of the agricultural population of their countries;"</p>
537 (VI)	Housing and town and country planning	<p>"Requests the Economic and Social Council, enlisting for the purpose the services of the appropriate subsidiary bodies, including where suitable regional bodies, and in collaboration with the competent specialized agencies and the non-governmental organizations concerned, to give urgent attention to practical measures to assist governments in increasing available housing facilities for people in the lowest income groups,"</p>
625 B (VII)	Land reform	<p>"2. Invites the Secretary-General and the specialized agencies, in carrying out their studies and activities on the questions of land reform to place particular emphasis on:</p> <p>"(a) The speeding up, at the request of the interested governments and according to the circumstances prevailing in different countries or regions, of such practical measures to encourage the promotion of and the carrying out of their land reform programmes as:</p>

<u>Resolution No.</u>	<u>Title of resolution</u>	<u>Pertinent provision</u>
733 (VIII)	Studies on internal migration	<p>".....</p> <p>"(b) Practical measures of technical assistance so as to increase agricultural output, especially of foodstuffs, to prevent the loss of, or decrease in, harvests of those foodstuffs and to improve production methods, increase sales and encourage equitable distribution;"</p> <p>"1. Invites the Economic and Social Council, in co-operation with the International Labour Organisation and other interested agencies, to develop, within available resources, an appropriate programme of studies on internal migration, especially in the economically less developed countries, to be carried out at the request of the countries concerned;"</p>
127 (VII)	False or distorted reports	<p>V. <u>Studies requested from Member States</u></p> <p>"Invites the Governments of States Members</p> <p>"1. To study such measures as might with advantage be taken on the national plane to combat, within the limits of constitutional procedures, the diffusion of false or distorted reports likely to injure friendly relations between States;"</p>

ARTICLE 14

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TEXT OF ARTICLE 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, **including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.**

INTRODUCTORY NOTE

1. Article 14 empowers the General Assembly to recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair: (a) the general welfare, or (b) friendly relations among nations. These situations include those resulting from a violation of the provisions of the Charter setting forth the Purposes and Principles of the United Nations.
2. The General Assembly's power of recommendation under Article 14, as in the case of Articles 10 and 11 (2), is subject to the provisions of Article 12 under which, while the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the Charter, the General Assembly cannot make any recommendations with regard to that question unless the Security Council so requests.
3. The resolutions of the General Assembly in which Article 14 is explicitly referred to, or in which its language is used, are listed in the General Survey, as are resolutions which recall earlier resolutions containing such references. References to Article 14 made in the course of debates in connexion with various agenda items are also mentioned.
4. The Analytical Summary of Practice deals with the following two questions relevant to Article 14:
 - a. The question of the type of "measures for the peaceful adjustment of any situation" of the nature described in Article 14 that the General Assembly may recommend under the Article;
 - b. The question of the powers granted to the General Assembly under Article 14 in connexion with the term "regardless of origin".
5. The first question was the subject of considerable constitutional discussion during the consideration of a draft resolution relating to the future Government of Palestine which proposed the adoption of certain measures with regard to the peaceful adjustment of the situation in Palestine as one deemed "likely to impair the general welfare and friendly relations among nations". Certain resolutions adopted in connexion with the following items are also examined under the same question: treatment of people of Indian origin in the Union of South Africa, measures for the peaceful solution of the problem of prisoners of war, and complaint of Yugoslavia of hostile activities of certain Governments.

6. The second question arose during the consideration of the inclusion in the General Assembly's agenda of an item relating to the peace treaty with Italy which later was withdrawn from the agenda. The debate involved constitutional discussion of the term "regardless of origin" as used in Article 14.

7. Since Article 14 has been frequently invoked in conjunction with Article 10 in the proceedings of the General Assembly to which the resolutions included in this study relate, as well as in the applications for inclusion of the relevant items in the agenda, the resolutions mentioned above may be regarded as throwing light also on the provisions of Article 10.

I. GENERAL SURVEY

8. Explicit reference to Article 14 was made in the resolutions of the General Assembly relating to the establishment and re-establishment of the Interim Committee, that is to say, in resolutions 111 (II), 196 (III) and 295 (IV), and in resolution 721 (VIII), "The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa".

9. Resolution 111 (II), "Establishment of an Interim Committee of the General Assembly", contained a reference to Article 14 in its preamble and provided in paragraph 2(b) that the Interim Committee should assist the General Assembly in the performance of its functions by considering any dispute or any situation which, by virtue of Articles 11 (2), 14 or 35 of the Charter, had been proposed for inclusion in the agenda of the General Assembly and reporting with its conclusions to the General Assembly.

10. The references to Article 14 contained in resolution 111 (II) were repeated in resolution 196 (III), "Re-establishment of the Interim Committee of the General Assembly", and in resolution 295 (IV), "Re-establishment of the Interim Committee of the General Assembly".

11. Reference 1/ to Article 14 was made during the proceedings connected with resolutions 111 (II) and 196 (III). The constitutional discussion centred, however, on

1/ G A (II), 1st Com., 74th mtg., pp. 129-132, 134' and 135.

76th mtg., p. 148

77th mtg., pp. 158 and 161.

78th mtg., pp. 164, 165 and 172.

94th mtg., pp. 307, 308 and 309.

97th mtg., p. 334.

Plen., vol. I, 91st mtg., p. 293.

Plen., vol. II, 110th mtg., pp. 769 and 782.

G A (III/1), Ad Hoc Pol. Com., 1st mtg., p. 1.

3rd mtg., p. 26.

Plen., 166th mtg., pp. 668 and 669

the question of the relationship between the responsibilities of the General Assembly and the primary responsibility of the Security Council for matters relating to the maintenance of international peace and security. As this question is closely related to the provisions of Article 11, it is dealt with in the study on that Article 2/

12. By resolution 721 (VIII), in paragraph 4(a)(11),^{3/} the General Assembly requested the United Nations Commission on the Racial Situation in the Union of South Africa to continue its study of the development of the racial situation in the Union of South Africa in relation "to the provisions of the Charter and, in particular, to Article 14".

13. The language of Article 14 was used by the General Assembly in the following two resolutions: resolution 44 (I), "Treatment of Indians in the Union of South Africa", the operative part of which states that "friendly relations between the two Member States have been impaired"; and resolution 181 (II), "Future government of Palestine", in the preamble of which the General Assembly considered that the situation in Palestine was "likely to impair the general welfare and friendly relations among nations".

14. A part of the text of Article 14 was reproduced in the preambles of resolution 427 (V), "Measures for the peaceful solution of the problem of prisoners of war", and of resolution 509 (VI), "Complaint of hostile activities of the Government of the Union of Soviet Socialist Republics and the Governments of Bulgaria, Hungary, Romania and Albania, as well as the Governments of Czechoslovakia and Poland, against Yugoslavia", although the resolutions did not expressly refer to the Article.

15. Subsequent to the adoption of resolution 44 (I), "Treatment of Indians in the Union of South Africa", the General Assembly adopted, at various sessions, five other resolutions on the same question, four of which expressly recalled resolution 44 (I). 4/

2/ See also in this Repertory under Article 11, paragraphs 22-45.

3/ In its Report to the General Assembly at its eighth session, the United Nations Commission on the Racial Situation in the Union of South Africa had stated: "... It is clear that by the inclusion of Article 14 the Charter was intended also to make provision for cases (regardless of origin) which, though not directly threatening peace and security, were likely to bring interests into conflict with one another, to impair friendly relations among nations, and to prejudice the 'general welfare'. The object was that the Assembly should have the power to discuss and to make recommendations concerning such situations. The Charter makes particular mention in this Article of the fact that the situations in question include those 'resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations'. "This last passage of Article 14 recognizes explicitly and clearly that any violation of the Purposes and Principles of the Charter, the Organization's raison d'être, is prejudicial to the 'general welfare' and might impair 'friendly relations among nations'." (G A (VIII), Suppl. No. 16 (A/2505 and A/2505/Add.1), para. 114).

4/ See p. 13, footnote 31, below.

16. Article 14 was often invoked during the consideration of the item "United action for peace", 5/ and incidental references to it were made during the debates on various other items 9/ on the agenda of the General Assembly.

- 5/ G A (V), 1st Com., vol. I, 354th mtg., paras. 8 and 52; 356th mtg., paras. 31 and 32, 357th mtg., paras. 5 and 39; 359th mtg., para. 5; 368th mtg., paras. 9 and 10. General Assembly resolution 377 (V), "Uniting for peace", adopted as a result of the consideration of the above item, is treated in this Repertory under Article 11.
- 6/ Second session, item 60, The problem of the independence of Korea, (G A (II), General Com., 38th mtg., p. 20; Plen., vol. I, 90th mtg., p. 280).
- First part of the third session, item 19, and second part of the third session, item 4, Study of methods for the promotion of international co-operation in the political field: report of the Interim Committee of the General Assembly (G A (III/2), Ad Hoc Pol. Com., 29th mtg., pp. 4, 5 and 6; 30th mtg., pp. 14 and 19).
- First part of the third session, item 42, and second part of the third session, item 7, Violation by the Union of Soviet Socialist Republics of fundamental human rights, traditional diplomatic practices and other principles of the Charter (G A (III/1), 6th Com., 134th mtg., p. 725; 137th mtg., pp. 750 and 754).
- Second part of the third session, item 18, Having regard to the provisions of the Charter and of the peace treaties, the question of observance in Bulgaria and Hungary of human rights and fundamental freedoms, including questions of religious and civil liberties, with special reference to recent trials of Church leaders (G A (III/2), General Com., 58th mtg., pp. 18 and 19; 59th mtg., pp. 34 and 35; Ad Hoc Pol. Com., 35th mtg., pp. 77 and 89; 37th mtg., p. 115; Ad Hoc Pol. Com., Annexes, pp. 5 and 6, A/AC.24/48/Rev.2; Plen., 189th mtg., p. 12; 202nd mtg., pp. 246 and 248; 203rd mtg., p. 270).
- Fourth session, item 21, Threats to the political independence and territorial integrity of Greece: report of the United Nations Special Committee on the Balkans (G A (IV), 1st Com., 297th mtg., para. 36); item 27, Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms (G A (IV), General Com., 65th mtg., para. 55; Ad Hoc Pol. Com., 12th mtg., para. 2).
- Fifth session, item 25, Observance in Bulgaria, Hungary and Romania of human rights and fundamental freedoms: advisory opinion of the International Court of Justice (G A (V), Ad Hoc Pol. Com., 6th mtg., para. 24); item 71, The question of Formosa (G A (V), General Com., 71st mtg., para. 7).
- Sixth session, item 6 of the supplementary list of items for the agenda of the sixth session, Violation by France in Morocco of the Principles of the Charter and the Declaration of Human Rights (G A (VI), General Com., 75th mtg., para. 30; Plen., 354th mtg., para. 127); item 65, Appointment of an impartial international commission under United Nations supervision to carry out a simultaneous investigation in the Federal Republic of Germany, in Berlin, and in the Soviet Zone of Germany in order to determine whether existing conditions there make it possible to hold genuinely free elections throughout these areas (G A (VI), 76th mtg., paras. 45 and 50; Ad Hoc Pol. Com., 22nd mtg., para. 29; 23rd mtg., para. 22; 25th mtg., para. 56; Plen., 341st mtg., para. 98).
- Seventh session, item 65, and eighth session, item 57, The question of Morocco (G A (VII), 1st Com., 548th mtg., paras. 28 and 48. G A (VIII), 1st Com., 634th mtg., para. 43; 635th mtg., paras. 18 and 31).
- Seventh session, item 66, The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa (G A (VII), Ad Hoc Pol. Com., 14th mtg., para. 9; 18th mtg., paras. 13 and 72; Plen., 381st mtg., para. 102).
- Eighth session, item 56, The Tunisian question (G A (VIII), 1st Com., 644th mtg., para. 30).

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the type of "measures for the peaceful adjustment of any situation" of the nature described in Article 14 that the General Assembly may recommend under the Article

17. During the consideration of the item concerning Palestine at the second regular session of the General Assembly, the problem arose whether the General Assembly had the power to recommend to the Members of the United Nations the adoption and implementation of a plan for partition of the territory of Palestine. In this connexion, two divergent views were expressed. It was argued, on the one hand, that such a recommendation would be ultra vires for the General Assembly and would not be binding from the legal point of view, since the essence of the concept of a recommendation was that it was not binding and could not, therefore, be enforced. A recommendation of this nature by the General Assembly would constitute a decision of a compulsory character in excess of its own powers. On the other hand, it was contended that if the General Assembly adopted the resolution in question it would be recommending a type of measure covered by Article 14, which provides that the General Assembly "may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations".

18. The resolutions adopted by the General Assembly in connexion with the following questions may also be regarded as throwing light on the practice of the Assembly with regard to the problem examined here: treatment of people of Indian origin in the Union of South Africa, measures for the peaceful solution of the problem of prisoners of war, and complaint of Yugoslavia of hostile activities of certain Governments.

1. Resolution 181 (II)

19. At its 90th plenary meeting, on 23 September 1947, the General Assembly decided 7/ to establish an Ad Hoc Committee on the Palestinian question, to which it referred the following items: (a) Question of Palestine (item proposed by the United Kingdom); 8/ (b) Report of the Special Committee on Palestine; 9/ (c) Termination of the mandate over Palestine and the recognition of its independence as one State (item proposed by Saudi Arabia and by Iraq). 10/

20. At its 19th meeting, the Ad Hoc Committee on the Palestinian question adopted 11/ a proposal submitted by the Chairman to establish: (a) a conciliation group; (b) a sub-committee (Sub-Committee 1) to draw up a detailed plan based on the majority proposals of the United Nations Special Committee on Palestine; (c) a sub-committee (Sub-Committee 2) to draw up a detailed plan in accordance with the proposals of

7/ G A (II), Plen., vol. I, 90th mtg., p. 275.

8/ A/286; letter dated 3 April 1947 from the delegation of the United Kingdom to the Acting Secretary-General, by which the Government of the United Kingdom requested that the question of Palestine be included in the agenda of the next regular session of the General Assembly. It was stated further that the United Kingdom Government would ask the General Assembly to make recommendations under Article 10 of the Charter concerning the future government of Palestine.

9/ G A (II), Suppl. No. 11, vols. I-IV (A/364 and Adds. 1-4).

10/ A/317, A/328.

11/ G A (II), Ad Hoc Com. on the Palestinian question, 19th mtg., pp. 136 and 137.

Saudi Arabia and Iraq for the recognition of Palestine as an independent united State and the proposal to the same effect submitted by Syria. 12/

21. The report of Sub-Committee 1 recommended the adoption of a draft resolution embodying a plan of partition with economic union. 13/

22. The report of Sub-Committee 2 to the Ad Hoc Committee 14/ recommended the adoption of three draft resolutions. The first of these provided that the General Assembly, before recommending a solution of the Palestine problem, would request the International Court of Justice for an advisory opinion on eight legal questions connected with, or arising from, that problem, including the following two questions:

"(g) Whether the United Nations is competent to recommend either of the two plans and recommendations of the majority or minority of the United Nations Special Committee on Palestine, or any other solution involving partition of the territory of Palestine, or a permanent trusteeship over any city or part of Palestine, without the consent of the majority of the people of Palestine;

"(h) Whether the United Nations, or any of its Member States, is competent to enforce or recommend the enforcement of any proposal concerning the constitution and future government of Palestine, in particular, any plan of partition which is contrary to the wishes, or adopted without the consent of, the inhabitants of Palestine,".

23. At the 32nd meeting of the Ad Hoc Committee, at the request 15/ of the representative of France, separate votes were taken on the provisions of the first draft resolution: one on the first seven questions, including question (g), the other on question (h). 16/

24. The proposal to refer the first seven questions to the International Court of Justice was rejected 17/ by 25 votes against, 18 in favour and 11 abstentions. The proposal to refer question (h) to the Court was rejected 18/ by 21 votes against, 20 in favour and 13 abstentions.

25. At its 34th meeting, the Ad Hoc Committee adopted 19/ by 25 votes to 13, with 17 abstentions, the draft resolution recommended by Sub-Committee 1, as amended.

26. The General Assembly considered the draft resolution adopted by the Ad Hoc Committee at its 124th to 128th plenary meetings.

27. During the discussion in the Ad Hoc Committee and at the plenary meeting it was argued that while Article 14 gave the General Assembly the right to take certain

12/ G A (II), Ad Hoc Com. on the Palestinian question, pp. 238 and 239, annex 14 (A/AC.14/22).

13/ Ibid., pp. 242-264, annex 19 (A/AC.14/34 and Corr.1 and Add.1).

14/ Ibid., pp. 270-303, annex 25 (A/AC.14/32 and Add.1).

15/ Ibid., 32nd mtg., pp. 202 and 203.

16/ Questions (g) and (h) above are referred to in the Official Records of the 32nd meeting of the Ad Hoc Committee on the Palestinian question as sub-paragraphs (vii) and (viii).

17/ G A (II), Ad Hoc Com. on the Palestinian question, 32nd mtg., p. 203.

18/ Ibid.

19/ Ibid., 34th mtg., p. 223.

limited measures for the peaceful adjustment of any situation, it was not empowered to take substantive measures which would bind the future of a nation. It was also argued that the problem of Palestine could not be dealt with under Article 14 since what was being proposed was not the peaceful adjustment of a situation but the imposition by force of a settlement contrary to the wishes of the people concerned. If the General Assembly adopted the plan for partition, it would have to use force to carry it out.

23. It was further pointed out that there was a distinction between making a recommendation and adopting a plan prejudicial to the territorial integrity of a people and their political and legal status, and to appoint a committee of the Assembly to carry out that plan. Nor did it seem possible to contend that this plan was merely a recommendation, because there was always the possibility that a recommendation might not be accepted. On the contrary, it was argued that this plan undoubtedly implied coercion, as was proved by the fact that one of its clauses provided that any attempt to alter by force the settlement set forth in the resolution should be considered as a threat to the peace, breach of the peace, or act of aggression within the meaning of Article 39. This, then, it was concluded, was a settlement which was to be forcibly imposed and therefore was not merely a recommendation. To follow such a procedure would constitute an infringement of the Charter.

29. If the plan for partition of Palestine were to be adopted, the General Assembly would fail to exercise its function of recommending measures for the peaceful adjustment of any situation as provided under Article 14. Further, many Member States would still have doubts regarding the legality of the action taken by the General Assembly.

30. It was maintained, on the other hand, that the General Assembly had the authority under Article 14 to recommend measures for the peaceful settlement of any situation which it deemed likely to impair the general welfare or friendly relations among nations; that the situation in Palestine was of such a nature could not be questioned. Consequently, if, in the opinion of the General Assembly, partition of Palestine and the establishment of two independent States was the best solution of the problem, the General Assembly was competent to make a recommendation to that effect. Article 14, as well as Article 10, could be considered relevant to the situation in Palestine, and the General Assembly could make recommendations under the authority of that Article. The view was also expressed that if the binding force of treaties -- in this instance of the mandate -- was invoked, an appeal might be made to the doctrine implicit in Article 14 of the Charter concerning adjustments of situations likely to impair the general welfare or friendly relations among nations. 20/

Decision

At its 128th plenary meeting on 29 November 1947, the General Assembly adopted 21/ by 33 votes to 13, with 10 abstentions, resolution 181 (II), "Future government of Palestine", incorporating a "Plan of Partition with Economic Union".

20/ For text of relevant statements, see: G A (II), Ad Hoc Com. on the Palestinian question:

27th mtg.: Iraq, p. 164; Poland, pp. 160 and 161.

31st mtg.: Lebanon, pp. 194 and 195; Mexico, p. 196.

Plen., vol. II, 124th mtg.: Egypt, pp. 1329 and 1330; United States, pp. 1326 and 1327.

125th mtg.: USSR, p. 1363.

126th mtg.: Cuba, p. 1383; Iraq, p. 1389; Pakistan, p. 1370.

21/ G A (II), Plen., vol. II, 128th mtg., p. 1425.

Resolution 181 A (II) read:

"The General Assembly,

"Having met in special session at the request of the mandatory Power to constitute and instruct a special committee to prepare for the consideration of the question of the future government of Palestine at the second regular session;

"Having constituted a Special Committee and instructed it to investigate all questions and issues relevant to the problem of Palestine, and to prepare proposals for the solution of the problem, and

"Having received and examined the report of the Special Committee (document A/364) including a number of unanimous recommendations and a plan of partition with economic union approved by the majority of the Special Committee,

"Considers that the present situation in Palestine is one which is likely to impair the general welfare and friendly relations among nations;

"Takes note of the declaration by the mandatory Power that it plans to complete its evacuation of Palestine by 1 August 1948;

"Recommends to the United Kingdom, as the mandatory Power for Palestine, and to all other Members of the United Nations the adoption and implementation, with regard to the future government of Palestine, of the Plan of Partition with Economic Union set out below;

"Requests that

"(a) The Security Council take the necessary measures as provided for in the plan for its implementation;

"(b) The Security Council consider, if circumstances during the transitional period require such consideration, whether the situation in Palestine constitutes a threat to the peace. If it decides that such a threat exists, and in order to maintain international peace and security, the Security Council should supplement the authorization of the General Assembly by taking measures, under Articles 39 and 41 of the Charter, to empower the United Nations Commission, as provided in this resolution, to exercise in Palestine the functions which are assigned to it by this resolution;

"(c) The Security Council determine as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution;

"(d) The Trusteeship Council be informed of the responsibilities envisaged for it in this plan;

"Calls upon the inhabitants of Palestine to take such steps as may be necessary on their part to put this plan into effect;

"Appeals to all Governments and all peoples to refrain from taking any action which might hamper or delay the carrying out of these recommendations, and

"Authorizes the Secretary-General to reimburse travel and subsistence expenses of the members of the Commission referred to in Part I, Section B, paragraph 1

below, on such basis and in such form as he may determine most appropriate in the circumstances, and to provide the Commission with the necessary staff to assist in carrying out the functions assigned to the Commission by the General Assembly." 22/

**2. Resolutions 44 (I), 265 (III), 395 (V),
511 (VI), 615 (VII) and 719 (VIII)**

31. By letter 23/ dated 22 June 1946 addressed to the Secretary-General, the delegation of India requested that the question of the treatment of Indians in the Union of South Africa be included in the agenda of the second part of the first session of the General Assembly, and that the situation, which was "likely to impair friendly relations between India and South Africa", be considered under Articles 10 and 14 of the Charter.

32. At its 46th plenary meeting, the General Assembly approved 24/ the inclusion of the item "Treatment of Indians in the Union of South Africa (item proposed by the Government of India)" and referred it to a Joint Committee of the First and Sixth Committees which considered the item at its 1st to 6th meetings.

33. At its 6th meeting, the Joint Committee adopted 25/ a draft resolution 26/ submitted by France and Mexico as an amendment to an Indian draft resolution, 27/ by 24 votes to 19, with 6 abstentions.

34. At its 50th to 52nd plenary meetings, the General Assembly considered the draft resolution recommended by the Joint Committee of the First and Sixth Committees.

35. During the consideration of the item, statements were made to the effect that the General Assembly was competent to recommend appropriate measures for the peaceful settlement of the situation in accordance with Article 14. 28/ On the other hand, it was objected, on the basis of Article 2 (7), that the question was a matter of domestic jurisdiction and that the United Nations was not competent to consider it. 29/

Decision

At its 52nd plenary meeting, on 8 December 1946, the General Assembly adopted 30/ by 32 votes to 15, with 7 abstentions, resolution 44 (I), "Treatment of Indians in the Union of South Africa", which read:

22/ Resolution 181 B (II) authorized the Secretary-General to draw from the Working Capital Fund a specified sum for the purposes set forth in the last paragraph of resolution 181 A (II).

23/ G A (I/2), Joint 1st and 6th Com., pp. 52 and 53, annex 1 (A/149).

24/ G A (I/2), Plen., 46th mtg., pp. 924 and 925.

25/ G A (I/2), Joint 1st and 6th Com., 6th mtg., p. 51.

26/ G A (I/2), Joint 1st and 6th Com., p. 133, annex 1f (A/C.1 and 6/12).

27/ G A (I/2), Joint 1st and 6th Com., pp. 131 and 132, annex 1d (A/C.1 and 6/3).

28/ For texts of relevant statements, see G A (I/2),

Joint 1st and 6th Com., 3rd mtg.: USSR, p. 28.

4th mtg.: Australia, p. 34; Chile, p. 40.

Plen., 51st mtg.: Mexico, p. 1024; Uruguay, p. 1031.

29/ See also in this Repertory under Article 2 (7).

30/ G A (I/2), Plen., 52nd mtg., p. 1061.

"The General Assembly,

"Having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter:

"1. States that, because of that treatment, friendly relations between the two Member States have been impaired and, unless a satisfactory settlement is reached, these relations are likely to be further impaired;

"2. Is of the opinion that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter;

"3. Therefore requests the two Governments to report at the next session of the General Assembly the measures adopted to this effect."

36. During its subsequent sessions, the General Assembly adopted a series of resolutions 31/ on the same question. 32/ The main provisions of these resolutions are summarized below:

(a) By resolution 265 (III), 33/ the General Assembly invited the Governments of India, Pakistan and the Union of South Africa to enter into discussions at a round-table conference, taking into consideration the Purposes and Principles of the Charter and the Declaration of Human Rights.

(b) By resolution 395 (V), 34/ the General Assembly recommended that the Governments of India, Pakistan and the Union of South Africa proceed with the holding of a round-table conference and that, in the event of failure of the three Governments to hold such a conference before 1 April 1951, a commission of three members should be established for the purpose of assisting the parties in carrying through appropriate negotiations. The General Assembly called upon the Governments concerned to refrain from taking any steps which would prejudice the success of their negotiations, in particular, the implementation of the Group Areas Act, and decided to include the item in the agenda of its sixth session.

(c) By resolution 511 (VI), 35/ the General Assembly recommended that a commission of three members be established for the purpose of assisting the Governments of India,

31/ G A resolutions 265 (III), 395 (V), 511 (VI), 615 (VII) and 719 (VIII). All these resolutions, with the exception of resolution 265 (III), expressly recalled resolution 44 (I).

32/ The question was included in the agenda of the second and third sessions of the General Assembly under the same title as in the agenda of the second part of the first session. In the agenda of the fifth and subsequent sessions it was included under the title "Treatment of people of Indian origin in the Union of South Africa".

33/ Adopted on 14 May 1949 by 47 votes to 1, with 10 abstentions (G A (III)/2, Plen., 212th mtg., p. 455).

34/ Adopted on 2 December 1950 by 33 votes to 6, with 21 abstentions (G A (V), Plen., vol. I, 315th mtg., para. 51).

35/ Adopted on 12 January 1952 by 44 votes to none, with 14 abstentions (G A (VI), Plen., 360th mtg., para. 35).

Pakistan and the Union of South Africa in carrying through appropriate negotiations and proposed a procedure for the nomination of its members. The General Assembly requested the Secretary-General, in the event that the members of the Commission should not be nominated in accordance with the recommended procedure, to lend his assistance to the three Governments with a view to facilitating appropriate negotiations between them. It called upon the Government of the Union of South Africa to suspend the implementation of the Group Areas Act pending the conclusion of the negotiations, and decided to include the item in the agenda of its seventh session.

(d) By resolution 615 (VII), 36/ the General Assembly established a United Nations Good Offices Commission with a view to arranging and assisting in negotiations between the three Governments concerned in order that a satisfactory solution of the question, in accordance with the Purposes and Principles of the Charter and the Universal Declaration of Human Rights, might be achieved. The General Assembly called upon the Government of the Union of South Africa to suspend the implementation of the Group Areas Act pending the conclusion of the negotiations, and decided to include the item in the agenda of its eighth session.

(e) By resolution 719 (VIII), 37/ the General Assembly expressed regret that the Government of the Union of South Africa had refused, inter alia, to make use of the good offices of the United Nations Good Offices Commission and had continued to implement the Group Areas Act. The General Assembly decided to continue the Commission, urged the Government of the Union of South Africa to co-operate with the Commission, again called upon that Government to refrain from implementing the Group Areas Act, and decided to include the item in the agenda of its ninth session.

3. Resolution 427 (V)

37. By letter 38/ dated 25 August 1950, the delegations of Australia, the United Kingdom and the United States requested that the item "Failure of the Union of Soviet Socialist Republics to repatriate or otherwise account for prisoners of war detained in Soviet territory" be included in the agenda of the fifth session of the General Assembly under Articles 10, 14 and 1 (3) of the Charter.

38. At its 285th plenary meeting, on 26 September 1950, the General Assembly approved 39/ the inclusion of the item in its agenda in the form recommended by the General Committee: "Complaint of failure on the part of the Union of Soviet Socialist Republics to repatriate or otherwise account for prisoners of war detained in Soviet territory". The Third Committee considered the item at its 338th to 340th and 342nd to 345th meetings.

39. The representatives of the three sponsoring States submitted a joint draft resolution 40/ to which various amendments were proposed.

36/ Adopted on 5 December 1952 by 41 votes to 1, with 15 abstentions (G A (VII), Plen., 401st mtg., para. 69).

37/ Adopted on 11 November 1953 by 42 votes to 1, with 17 abstentions (G A (VIII), Plen., 457th mtg., para. 93).

38/ G A (V), Annexes, a.i. 67, p. 2, A/1339.

39/ G A (V), Plen., vol. I, 285th mtg., para. 67.

40/ G A (V), Annexes, a.i. 67, pp. 10 and 11, A/C.3/L.145.

40. During the consideration of the item, reference was made to Article 14. 41/

41. At its 345th meeting on 11 December 1950, the Third Committee adopted 42/ the joint draft resolution, as amended, by 43 votes to 5, with 4 abstentions.

Decision

At its 325th plenary meeting, on 14 December 1950, the General Assembly adopted 43/ by 43 votes to 5, with 6 abstentions, resolution 427 (V), "Measures for the peaceful solution of the problem of prisoners of war", which read:

"The General Assembly,

"Mindful that one of the principal Purposes of the United Nations is to achieve international co-operation in solving international problems of a humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all,

"Considering that the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations,

"Believing that all prisoners having originally come within the control of the Allied Powers as a consequence of the Second World War should either have been repatriated long since or have been otherwise accounted for,

"Recalling that this is required both by recognized standards of international conduct and the Geneva Convention of 1949 for the protection of war victims, and by specific agreements between the Allied Powers,

"1. Expresses its concern at the information presented to it tending to show that large numbers of prisoners taken in the course of the Second World War have neither been repatriated nor otherwise accounted for;

"2. Calls upon all governments still having control of such persons to act in conformity with the recognized standards of international conduct and with the above-mentioned international agreements and conventions which require that, upon the cessation of active hostilities, all prisoners should, with the least possible delay, be given an unrestricted opportunity of repatriation and, to that end, to publish and transmit to the Secretary-General before 30 April 1951:

"(a) The names of such prisoners still held by them, the reasons for which they are still detained and the places in which they are detained;

"(b) The names of prisoners who have died while under their control as well as the date and cause of death, and the manner and place of burial in each case;

41/ G A (V), 3rd Com., 342nd mtg.: Union of South Africa, para. 87;
United Kingdom, para. 82.

343rd mtg.: New Zealand, para. 80; Poland, para. 69;
Ukrainian SSR, para. 4.

42/ G A (V), 3rd Com., 345th mtg., para. 86.

43/ G A (V), Plen., vol. I, 325th mtg., para. 36.

"3. Requests the Secretary-General to establish an Ad Hoc Commission composed of three qualified and impartial persons chosen by the International Red Cross or, failing that, by the Secretary-General himself, with a view to settling the question of the prisoners of war in a purely humanitarian spirit and on terms acceptable to all the governments concerned. The Commission shall convene at a suitable date after 30 April 1951 to examine and evaluate, in the light of the information made available to the fifth session of the General Assembly, the information furnished by governments in accordance with the terms of the preceding paragraph. In the event that the Commission considers that this information is inadequate or affords reasonable ground for believing that prisoners coming within the custody or control of any foreign government as a consequence of military operations of the Second World War have not been repatriated or otherwise accounted for, the General Assembly:

"(a) Requests the Commission to seek from the governments or authorities concerned full information regarding such prisoners;

"(b) Requests the Commission to assist all governments and authorities who so desire in arranging for and facilitating the repatriation of such prisoners;

"(c) Authorizes the Commission to use the good offices of any qualified and impartial person or organization whom it considers might contribute to the repatriation or accounting for of such prisoners;

"(d) Urges all governments and authorities concerned to co-operate fully with the Commission, to supply all necessary information and to grant right of access to their respective countries and to areas in which such prisoners are detained;

"(e) Requests the Secretary-General to furnish the Commission with the staff and facilities necessary for the effective accomplishment of its task;

"4. Urgently requests all the governments to make the greatest possible efforts, based in particular on the documentation to be provided, to search for prisoners of war whose absence has been reported and who might be in their territories;

"5. Directs the Commission to report as soon as practicable the results of its work to the Secretary-General for transmission to the Members of the United Nations."

4. Resolution 509 (VI)

42. By letter 44/ dated 9 November 1951, addressed to the President of the General Assembly, the Head of the delegation of the Federal People's Republic of Yugoslavia requested the inclusion of the following item in the agenda of the sixth session of the General Assembly: "Hostile activities of the Government of the Union of Soviet Socialist Republics and the Governments of Bulgaria, Hungary, Romania and Albania, as well as the Governments of Czechoslovakia and Poland, against Yugoslavia."

43. In an explanatory memorandum 45/ accompanying the letter, it was requested that, in accordance with Article 10, the item be included in the agenda of the General Assembly. At the 77th meeting of the General Committee, however, the representative

44/ G A (VI), Annexes, a.i. 68, p. 1, A/1946

45/ G A (VI), Annexes, a.i. 68, pp. 1 and 2, A/1946.

of Yugoslavia requested 46/ that the Committee include the item in accordance with the principles of Article 14.

44. At its 342nd plenary meeting, on 13 November 1951, the General Assembly decided 47/ to include the item in its agenda in the form proposed by the General Committee, that is to say, preceded by the words "Complaint of".

45. The Ad Hoc Political Committee considered the item at its 8th to 14th meetings. The representative of Yugoslavia submitted a draft resolution, and later two successive revisions 48/ affecting the preamble of the original text.

46. At its 14th meeting on 1 December 1951, the Ad Hoc Political Committee adopted 49/ the draft resolution as revised by 50 votes to 5, with 2 abstentions.

Decision

At its 355th plenary meeting, on 14 December 1951, the General Assembly adopted 50/ by 7 votes to 5, with 2 abstentions, resolution 509 (VI), which read:

"The General Assembly,

"Having considered the complaint submitted to it by the delegation of the Federal People's Republic of Yugoslavia concerning the activities of the Government of the Union of Soviet Socialist Republics and the Governments of Bulgaria, Hungary, Romania and Albania, as well as the Governments of Czechoslovakia and Poland, against Yugoslavia,

"Viewing with serious concern the tension between Yugoslavia on the one side, and the other above-mentioned countries on the other side,

"Mindful of the purpose of the United Nations 'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace',

"Mindful of the authority of the General Assembly to 'recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations',

"1. Takes note of the declaration of the Yugoslav delegation that the Government of Yugoslavia for its part is ready to do all that is necessary for the carrying out of the recommendations of the present resolution;

"2. Recommends that the Governments concerned:

"(a) Conduct their relations and settle their disputes in accordance with the spirit of the United Nations Charter;

"(b) Conform in their diplomatic intercourse with the rules and practices which are customary in international relations;

46/ G A (VI), General Com., 77th mtg., para. 45.

47/ G A (VI), Plen., 342nd mtg., para. 40.

48/ G A (VI), Annexes, a.i. 68, pp. 3 and 4, A/AC.53/L.10/Rev.1 and A/1997, paras. 5-70.

49/ G A (VI), Ad Hoc Pol. Com., 14th mtg., para. 27.

50/ G A (VI), Plen., 355th mtg., para. 39.

"(c) Settle frontier disputes by means of mixed frontier commissions or other peaceful means of their choice."

B. The question of the powers granted to the General Assembly under Article 14 in connexion with the term "regardless of origin"

47. During the consideration of the inclusion in the agenda of the second session of the General Assembly of the item "Suggestions to the countries concerned with the Peace Treaty with Italy", the question arose whether the term "regardless of origin", as used in the provision of Article 14, that is to say, that the General Assembly "may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations", authorized the General Assembly to consider the revision or modification of a specific international treaty or treaties. 51/

Proceedings connected with the inclusion of the item "Suggestions to the countries concerned with the Peace Treaty with Italy" in the agenda of the second session of the General Assembly

48. By telegram 52/ dated 27 August 1947, to the Secretary-General, the Permanent Representative of Argentina requested the inclusion of the following item in the supplementary agenda of the second session of the General Assembly: "Revision of the Treaty of Peace with Italy". This proposal was supported 53/ by Bolivia, Costa Rica, the Dominican Republic, Panama, Paraguay and Uruguay.

49. On 4 September 1947, the representative of Argentina submitted a draft resolution 54/ providing that the General Assembly recommend to the Member States signatories to the Peace Treaty with Italy that Italy be given an opportunity to present new observations and suggestions which would tend to lessen the obligations that the Treaty had imposed on it and which had to be met by its people.

50. At the 38th meeting of the General Committee, on 21 September 1947, Chile proposed 55/ the following change in the wording of the title: "Suggestions to the countries concerned with the Peace Treaty with Italy". The representative of Argentina accepted the change. 56/

51. At the same meeting, the General Committee, by 4 votes to 2, with 3 abstentions, recommended to the General Assembly the inclusion in its agenda of the item, as amended. 57/

52. At its 91st plenary meeting, on 23 September 1947, the General Assembly, by 22 votes to 8, with 19 abstentions, decided 58/ to include the item, as recommended by the General Committee, in its agenda.

51/ The question whether the General Assembly was authorized to consider the revision of international treaties was also mentioned during the discussion of the item "The Tunisian question" (G A (VIII), 1st Com., 34th mtg., pp. 218 and 219; 87th mtg., p. 250; 88th mtg., pp. 255 and 256; 89th mtg., p. 259).

52/ G A (II), 1st Com., p. 530, annex 5 (A. 361).

53/ G A (II), 1st Com., pp. 530 and 531, annex 3 (A' 361).

54/ G A (II), 1st Com., p. 545, annex 6 (A. 379).

55/ G A (II), Gen. Com., 38th mtg., pp. 17 and 13.

56/ G A (II), Gen. Com., 38th mtg., p. 13.

57/ *Ibid.*

58/ G A (II), Plen., 91st mtg., p. 299.

53. During the discussion on the inclusion of the proposed item in the agenda of the General Assembly, objection was raised that the purpose of the draft resolution was to recommend the revision of a peace treaty. It was contended that, since Article 107 of the Charter referred specifically to such proposals, the General Assembly was not competent to discuss a question of this nature. Any recommendation which the General Assembly or any other organ of the United Nations might formulate would be invalid. The matter concerned only the signatories of the Peace Treaty with Italy. It was also questioned whether the General Assembly should recommend the revision of peace treaties under Article 14 of the Charter, more particularly in the light of the provision of Article 107.

54. It was contended, on the other hand, that the draft resolution submitted did not propose that the General Assembly should discuss the Peace Treaty with Italy but that it should appeal to its signatories to allow Italy to ask for the modification of certain clauses. Therefore, Article 107 did not apply in this case. Attention was drawn to the provision of Article 14 that the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations. The term "regardless of origin" had been emphasized at the San Francisco Conference for the very purpose of enabling the General Assembly to consider a situation that might arise out of a treaty, to express its opinion on the matter and to make an appropriate recommendation. The General Assembly could consider any situation likely to impair friendly relations or affect international peace and could discuss it, regardless of its origin. The very fact that the Peace Treaty with Italy had caused injustice had provoked discussion which might lead to recommendations by the General Assembly.

55. It was further stated that a recommendation by the General Assembly concerning the fundamental reconsideration of some of the clauses of the Peace Treaty with Italy was within the powers of the General Assembly under Chapter IV of the Charter. The revision of treaties was in no way contradictory to the Charter, Article 14 being sufficiently comprehensive to include the case of revision of treaties. In the Charter, the doctrine embodied in Article 19 of the Covenant of the League of Nations not only had been preserved but had been improved. It was also argued that "regardless of the origin" of the problem presented, Article 14 gave Italy the right to come to the General Assembly with its problem if it was likely to impair the general welfare of the world. It was the duty of the United Nations to listen to the petitions of countries which claimed that their relations with the rest of the world were so affected by a treaty that the general welfare was likely to be impaired or that the peace of the world was likely to be disturbed. 59/

56. At the 116th meeting of the First Committee, on 19 November 1947, the representative of Argentina withdrew 60/ his proposal for inclusion of the item, "Suggestions to the countries concerned with the Peace Treaty with Italy", in view of the many objections that had been raised.

59/ For texts of relevant statements, see G A (II),

Gen. Com., 37th mtg.: Argentina, p. 16; France, pp. 15 and 16; USSR, p. 15.

38th mtg.: USSR, p. 17.

Plen., vol. I, 90th mtg.: Argentina, pp. 288 and 289; Australia, pp. 280 and 281;

USSR, pp. 277 and 278; United States, p. 287.

91st mtg.: Ecuador, p. 298; Yugoslavia, pp. 291 and 292.

60/ G A (II), 1st Com., 116th mtg., p. 527.

ARTICLE 15

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TEXT OF ARTICLE 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

INTRODUCTORY NOTE

1. Two main issues arise with regard to the application of Article 15: the question of what reports have been considered by the Assembly and the question of what "consideration" it has given to those reports.

2. Article 15 (1) provides specifically for consideration of annual and special reports from the Security Council. Article 15 (2), however, refers only generally, to "reports from the other organs". This would appear to include not only the remaining four principal organs but such subsidiary organs as the Assembly may establish in accordance with Article 22.

3. Most of the work of the General Assembly has, in fact, been based on the reports of "other organs" and therefore the first section of this study deals briefly with what reports have been considered by the Assembly. Only a brief reference is made to the many reports from subsidiary organs established by the Assembly, since the question of the Assembly's practice regarding subsidiary organs is considered in connexion with the study of the application of Article 22. Also, only a passing reference is made to the numerous reports from the Secretary-General on matters under consideration by the Assembly; for further information concerning these reports, the reader is referred to the study on Article 98, that Article providing that the Secretary-General shall perform those functions entrusted to him by the General Assembly.

4. The second section of this study is concerned with the Assembly's interpretation of the word "consider". This has not, in itself, given rise to discussion but, in practice, the word has been interpreted in various ways. The pattern of consideration has varied from report to report and from session to session, but certain general procedures in relation to the annual reports from the principal organs have progressively become established. This section of the study, also, concentrates largely on the consideration given to these reports, since the Assembly's consideration of other reports follows, in the main, its general pattern of consideration of virtually all agenda items. For purposes of comparison, it has seemed better to treat the form of the Assembly's consideration as far as possible by topic rather than by organ: how far the General Assembly has engaged in a general discussion on the basis of the reports; how far it has assessed the work of the organ in question; and how far it has used the reports as a basis for considering and taking decisions on a particular question. It will be found that the Assembly's practice on these matters has varied considerably.

5. As to the procedure for the consideration of reports, the study, in its third section, deals with the extent to which: (a) reports have been considered either first in committee or directly in plenary meeting; (b) reports have been considered either separately or in connexion with other related subjects; and (c) the Assembly has thought it necessary to take a formal vote on reports as a whole.

I. GENERAL SURVEY

6. At each of its eight regular sessions, the General Assembly has "received and considered" annual reports from the Security Council, the Economic and Social Council, the Trusteeship Council, and the Secretary-General on the work of the organization. The reports from the Security Council and the Secretary-General have been submitted in accordance with specific provisions of the Charter (Articles 24 and 98, respectively). In the case of the Security Council's annual reports, the Assembly has confined itself to taking note of the report without discussing its substance although, on two occasions, certain criticisms of the report have been voiced and at other times representatives have expressed the view that it was within the Assembly's competence to discuss the report if it wished to do so. The Secretary-General's report has never formed the subject of a resolution adopted by the General Assembly. On one occasion it specifically formed part of the basis for the Assembly's general debate in plenary meeting and at other times reference has been made to it by the President at the opening of the debate. 1/

7. The Economic and Social Council and the Trusteeship Council are not obliged by any specific Charter provision to submit annual reports to the General Assembly, but responsibility for the functions of the United Nations in the fields in which these two Councils operate 2/ is vested in the General Assembly, and both Councils function under the Assembly's authority (Articles 60, 85 and 87). Moreover, rule 13 of the Assembly's rules of procedure provides that the provisional agenda of a regular session shall include reports from these Councils. Each Council has regularly submitted an annual report to the General Assembly and the Assembly has used these reports as a basis for general discussion of the subjects involved, for an assessment of the work of the Council in question and for the consideration of particular matters on which draft resolutions have been submitted. 3/

8. In the case of the Economic and Social Council's report, the practice has been to refer chapters of the report, according to their subject matter, to Main Committees and, latterly, to consider certain chapters in plenary meeting without reference to committee. The Assembly has then, as a rule, adopted one resolution taking note of the report and several resolutions relating to particular aspects of it. At times, various chapters of the report have been considered in committee in connexion with other agenda items to which they related and the Committees' recommendations have been considered in plenary meeting under these items. Certain chapters of the report have also formed the subject of separate agenda items.

1/ See II.B.1, below.

2/ With the exception of trusteeship functions relating to areas designated as strategic, which are the responsibility of the Security Council; the Trusteeship Council's reports on such areas are not therefore considered in this study,

3/ See II.B, below.

9. The Assembly has always referred the Trusteeship Council's report to the Fourth Committee, which, in turn, has first undertaken a general discussion and then considered draft resolutions on individual subjects — a large number of the resolutions adopted by the General Assembly on trusteeship questions have been based on draft resolutions submitted in committee during the consideration of the report. The Assembly has also adopted a general resolution taking note of the Trusteeship Council's report, but these general resolutions have in each case also called that Council's attention to the comments made during the general discussion in the Fourth Committee.

10. Rule 13 of the rules of procedure also provides that the provisional agenda of a regular session shall include a report from the International Court of Justice. No such reports have, however, been submitted by the Court nor has the question been raised in the Assembly.

11. In accordance with Article 24, the Security Council has submitted several special reports ^{4/} to the General Assembly on the question of the admission of new Members to the United Nations. In considering these reports, the Assembly has discussed the subject-matter involved as well as the Council's handling of that subject. It has, in certain instances, referred questions back to the Council for reconsideration. In addition, the Council has transmitted to the Assembly reports of the Atomic Energy Commission and of the Commission for Conventional Armaments. The General Assembly has also considered the substance of reports by the Economic and Social Council and the Trusteeship Council on particular subjects and the reports from the ad hoc bodies established by the Assembly and directed to report to it. It has adopted various resolutions on the basis of such consideration. In certain cases, as, for example, in those of the Temporary Commission on Korea ^{5/} and the United Nations Special Committee on the Balkans, ^{6/} the Assembly has endorsed the report in question, or expressed its appreciation; in others it has simply taken note of the report and in still others it has referred to certain recommendations contained therein. The reports by the Secretary-General, submitted mainly at the request of the Assembly, have also formed the basis for debate and decision. ^{7/}

12. As regards the Main Committees of the General Assembly, and other sessional committees established by it, rule 67 of the rules of procedure provides that, unless the Assembly decides otherwise, it shall not make a final decision upon any item of the agenda until it has received the report of a committee on that item. In eight regular and two special sessions, only thirty-three resolutions have been adopted in plenary meeting without the report of a committee on the item under consideration. Rule 68 of the rules of procedure provides that "the discussion of a report of a Main Committee in a plenary meeting of the General Assembly shall take place if at least one third of the Members present and voting at the plenary meeting consider such a discussion to be necessary". During the early sessions of the General Assembly, it was customary for such discussions to be held if any representative wished to speak. Beginning with the fifth session, however, the Assembly has tended to limit the interventions in plenary meeting to explanations of vote on the Committee's recommendations. In certain cases,

^{4/} See annex II.

^{5/} C A resolution 195 (III).

^{6/} G A resolution 382 B (V).

^{7/} See II.B, below.

the President first put to the vote the question of whether the Assembly wished to discuss the report. 8/

13. It would appear that considerations of convenience have played some part in deciding such procedural issues as the priority a Main Committee should give in its agenda to the consideration of a report; for example, the availability of documents or the advisability of considering first various items on which the report has a bearing have been cited as reasons for postponing consideration. So, too, with the question of voting, similar draft resolutions have sometimes been voted on and at other times adopted "in the absence of objections". 9/

II. ANALYTICAL SUMMARY OF PRACTICE

A. Reports received and considered by the General Assembly

14. As stated above, the General Assembly, has at each of its regular sessions, received annual reports from the Security Council, the Economic and Social Council, the Trusteeship Council, and the Secretary-General on the work of the Organization. 10/

15. The annual reports of the Economic and Social Council on two occasions, 11/ and those of the Trusteeship Council invariably, have been introduced orally by the President of the Council speaking in a Main Committee. The annual report of the Secretary-General has on one occasion 12/ been supplemented by an oral report by him in plenary meeting; at other times 13/ he has made a statement at the close of the Assembly's general debate.

16. The Assembly has received from the Security Council twelve special reports 14/ on the question of the admission of new Members to the United Nations.

17. In addition, the Security Council transmitted the reports of the Atomic Energy Commission "as a matter of special concern" to the General Assembly 15/ and directed the Secretary-General to transmit to the Assembly two resolutions of the Commission and the records of its discussion. 16/ The Security Council also directed the Secretary-General to transmit to the General Assembly the report of the Commission for

8/ For example, on the question of uniting for peace, G A (V), Plen., vol. I, 299th mtg., p. 292; on the question of the former Italian colonies, G A (V), Plen., vol. I, 305th mtg., p. 393; on the Greek question, G A (VI), Plen., 351st mtg., pp. 214 and 215.

9/ See II.C, below.

10/ The titles of these reports and the numbers of the relevant agenda items are given in annex I.

11/ G A (IV), 2nd Com., 114th mtg., pp. 151-153 (see also Plen., Annexes, pp. 8-10 a.i. 11, A/1083, for verbatim record of statement); G A (V), Joint 2nd and 3rd Com., 45th mtg., pp. 1-6.

12/ G A (I/2), Plen., 35th mtg., pp. 693-703.

13/ G A (II), Plen., 90th mtg., pp. 267-272; G A (V), Plen., vol. I, 289th mtg., pp. 175 and 176; G A (VI), Plen., 348th mtg., pp. 200 and 201.

14/ Titles of the reports with the numbers of the relevant agenda items are given in annex II.

15/ G A (III/1), Plen., Annexes pp. 2 and 3, A/579.

16/ G A (IV), Suppl. No. 15, A/993.

Conventional Armaments, as well as the records of discussion, and proposals contained in a working paper of the Commission. 17/

18. In thirty-seven cases, a report (or resolution or recommendation) by the Economic and Social Council has constituted a separate item or part of an item of the Assembly's agenda, in addition to the item relating to the Council's regular annual report as a whole. In another twenty-four instances, items are listed as proposed by the Council. Examples of reports or parts of the annual report which were the subject of separate agenda items are: a report on freedom of information, 18/ a report on the draft International Covenant on Human Rights and Measures of Implementation, 19/ and a report on the Expanded Programme of Technical Assistance for the Economic Development of Under-Developed Countries. 20/

19. Reports from the Trusteeship Council are listed as forming the subject of eleven agenda items, or parts of agenda items (in addition to the agenda item relating to the Council's regular annual report as a whole). Some of these have formed part of the Council's annual report; special reports have included reports on administrative unions affecting Trust Territories 21/ and on the Ewe and Togoland unification problem. 22/

20. The Assembly has received reports from two subsidiary organs established in accordance with its rules of procedure: the Advisory Committee on Administrative and Budgetary Questions, and the Committee on Contributions. Over 200 reports have been received from the Advisory Committee relating to various agenda items. The Committee on Contributions has submitted a report annually.

21. Reports from various other subsidiary bodies established by the Assembly have formed the subject of more than a hundred agenda items or parts of agenda items. Some of these bodies, such as the International Law Commission, have reported annually since their establishment; others, such as the Special Committee on the Admission of New Members, established under General Assembly resolution 640 A (VII) have, in accordance with their terms of reference, completed their work in submitting one report.

22. Reports by the Secretary-General have constituted some 120 agenda items or parts of items of the General Assembly, but this figure does not include agenda items proposed by the Secretary-General nor does it include the innumerable reports and memoranda by the Secretary-General on the various items under consideration by the Assembly. Reports which specifically formed the subject of agenda items at the eighth session included, for example: summaries and analyses of information from Non-Self-Governing Territories transmitted under Article 73 e of the Charter; 23/ reports on

17/ G A (IV), Ad Hoc Political Com., Annexes, vol. 1; pp. 71 and 72 a.i. 24; A/1020 and A/1042; also SC, 4th yr., Suppl. for Sept.-Dec. 1949, pp. 2-8, S/1372, annex I.

18/ G A (III/1), Plen., Annexes, pp. 102-104, A/631.

19/ Formed part of the Council's annual report to the General Assembly (sixth session), subject of agenda item 29.

20/ Formed part of the Council's annual report to the General Assembly (eighth session), subject of agenda item 27.

21/ G A (VII), Suppl. No. 12 (A/2151).

22/ G A (VII), Annexes, a.i. 32, pp. 1-3, A/2289.

23/ United Nations Publication, Sales No.: 1953.VI.B.1., vol. II.

United Nations Headquarters, 24/ personnel policy, 25/ and the question of a change in the opening date of regular sessions of the General Assembly. 26/

B. Consideration of reports

1. Reports as basis of general discussion

23. On three occasions the reports of principal organs have been suggested as the basis for the Assembly's general debate in plenary meeting. At the second part of the first session, 27/ the Assembly accepted the recommendation of the General Committee that the reports of the Security Council, the Economic and Social Council and the Secretary-General should form the basis for general discussion. At the opening of the general debate at the Assembly's second session, 28/ the President pointed out that the report of the Secretary-General on the work of the Organization, as well as the report from the Security Council, "had been circulated". And at the opening of the general debate at the seventh session, 29/ he informed the Assembly that it would "of course, be quite appropriate" during the debate to discuss the reports of the Secretary-General and of the three Councils.

24. The General Assembly has not otherwise engaged in a general discussion on the basis of the annual reports of the Security Council or of the Secretary-General, though it has frequently done so in committee on the basis of the annual reports of the Economic and Social Council and of the Trusteeship Council.

25. In the case of the Trusteeship Council's report, the general debates have all been held in the Fourth Committee. The Economic and Social Council's report has served as the basis for general discussion in one of the three Main Committees to which its chapters have been referred: Second, Joint Second and Third, and Third Committees.

2. Consideration of the work of the organs

26. At the Assembly's third session, in connexion with the consideration of the Security Council's annual report in the Ad Hoc Political Committee, 30/ the right was reserved to put forward "a number of drafting amendments" to the report. Later, in plenary meeting, 31/ a protest was made against the treatment given in the report to the Czechoslovak question. At the fifth session, both in the Ad Hoc Political Committee and in plenary meeting 32/ an objection was put forward that the report of the Security Council contained an account of certain of the Council's decisions which were illegal, having been adopted when the Council was illegally constituted. In the Ad Hoc Political

24/ G A (VIII), Annexes, a.i., 41, pp. 1 and 2, A/2544.

25/ G A (VIII), Annexes, a.i. 51, pp. 1-21, A/2533.

26/ G A (VIII), Annexes, a.i. 52, pp. 1-3, A/2436.

27/ G A (I/2), Plen., 35th mtg., p. 704.

28/ G A (II), Plen., 82nd mtg., p. 13.

29/ G A (VII), Plen., 379th mtg., p. 15.

30/ G A (III/2), Ad Hoc Pol. Com., 32nd mtg., p. 47.

31/ G A (III/2), Plen., 199th mtg., pp. 209 and 210.

32/ G A (V), Ad Hoc Pol. Com., 78th mtg., pp. 499 and 500; G A (V), Plen., vol. I, 325th mtg., pp. 680 and 681.

Committee, 33/ it was made clear -- although there was disagreement with the above view -- that the right to criticize had not been questioned.

27. At the second part of the first session, the First Committee, at the Chairman's suggestion, deferred 34/ consideration of the report until certain other items had been dealt with, "in order to avoid repetitious debate". The Committee later 35/ adopted a draft resolution stating that it had received and discussed the report and had decided to proceed to the next item on the agenda "subject to the reservation made by the representative of Australia"; this reservation was to the effect that the Committee had the right to revert to the question of the work of the Security Council in connexion with the right of "veto". Similarly, at the second session, the First Committee decided 36/ "to discuss the Security Council's report after disposing of its other business"; a draft resolution, unanimously adopted by the Committee, taking note of the report, was put forward 37/ on the ground that "the main points of the Security Council's report had already been discussed by the Committee". By the third session, it would appear to have become a recognized practice that the General Assembly should confine itself to taking note of the Security Council's report. Thus, the Chairman of the Ad Hoc Political Committee at that session 38/ referred to the fact that the First Committee "had in the past always confined itself to taking note of the Security Council report", and suggested that the Ad Hoc Political Committee follow the same procedure -- which was accepted without objection. In opposing criticisms of the report (see para. 26 above) in plenary meeting, 39/ one representative stated that this was acting "in violation of a long-established practice in the General Assembly, according to which reports of the Security Council were noted without discussion in plenary meeting". With the exception of the discussion at the fifth session (see para. 26 above), the Assembly confined itself at subsequent sessions to adopting resolutions 40/ taking note of the report. The question as to whether "taking note" implied acceptance of the report was raised only in the one instance referred to above, but the fact that on six occasions abstentions were recorded in the voting on the report (see para. 54 below) would seem to indicate that the adoption of the resolutions involved some degree of acceptance.

28. However, in considering the special reports of the Security Council on the question of the admission of new Members, the Assembly has engaged in a full discussion of the proceedings and reports of that Council. As early as the second part of the first session, 41/ it debated fully the relative powers and functions of the Assembly and of the Security Council on this matter. 42/ On the one hand, it was maintained that the Assembly was only to discuss and act upon the recommendations of the Security Council for the admission of States to membership; on the other hand, the view was

33/ G A (V), Ad Hoc Pol. Com., 78th mtg., p. 500.

34/ G A (I/2), 1st Com., 18th mtg., p. 83.

35/ G A (I/2), 1st Com., 41st mtg., p. 283.

36/ G A (II), 1st Com., 59th mtg., p. 9.

37/ G A (II), 1st Com., 116th mtg., p. 527.

38/ G A (III/2), Ad Hoc Pol. Com., 32nd mtg., p. 47.

39/ G A (III/2), Plen., 119th mtg., pp. 210 and 211.

40/ G A resolutions 115 (II), 269 (III), 298 (IV), 397 (V), 514 (VI), 695 (VII) and 803 (VIII).

41/ G A (I/2), 1st Com., 12th-18th mtgs., pp. 37-83, in particular, relevant statements by Argentina, Australia, Egypt, Mexico, USSR and United States, at the 12th mtg.

42/ For a discussion of this question, see also in this Repertory under Article 4.

expressed that it was within the Assembly's powers to discuss the whole proceedings of the Council regarding membership applications, including the handling of the problem and the reasons advanced for the admission or rejection of applicants.

29. The Assembly, after adopting resolution 35 (I) referring back to the Council, for reconsideration, the applications of five States on which no recommendation had been made, also adopted resolution 36 (I) requesting the Council "to appoint a committee to confer with a committee on procedure of the General Assembly, with a view to preparing rules governing the admission of new Members" acceptable to both organs. 43/

30. At subsequent sessions, the Assembly also debated the Security Council's special reports on this question, and adopted resolutions 44/ calling on the Council to reconsider certain applications. On two occasions, 45/ it asked for advisory opinions from the International Court of Justice on certain aspects of the question. At the seventh session, the Assembly established 46/ a special committee to study the question of the admission of States to membership.

31. The Assembly has also discussed 47/ the reports of subsidiary organs of the Security Council transmitted to it by the latter. Thus, at its fourth session 48/ it discussed the Council's functions in relation to the Commission for Conventional Armaments. In resolution 300 (IV) the Assembly approved the proposals formulated by the Commission for Conventional Armaments 49/ for the submission and verification of full information by Member States on their conventional armaments and armed forces, and recommended that the Security Council continue its study of the regulation and reduction of conventional armaments and armed forces through the Commission.

32. In considering the annual reports of the Economic and Social Council and the Trusteeship Council, the General Assembly has discussed the work of these Councils, and their organization and procedures. It has usually adopted one general resolution on the report and, at times, various other resolutions on the operation of the Council in question.

33. Thus, at the second part of its first session it adopted resolution 49 (I) which noted with satisfaction the progress made by the Economic and Social Council and its efforts to solve economic and social problems and drew the Council's attention to the remarks made during the Assembly's discussions. Subsequently, following consideration of that Council's report by various Committees, the Assembly at its second, third,

43/ On the Committees' recommendation, a new rule (now rule 138) was adopted (G A resolution 116 (II)) providing that if the Council did not make a recommendation the Assembly might send the application back for further consideration.

44/ G A resolutions 113 C-E (II); 197 B-I (III); 296 A-I (IV); 620 B-G (VII).

45/ G A resolutions 113 B (II) and 296 J (IV).

46/ G A resolution 620 A (VII).

47/ See also in this Repertory under Article 26.

48/ G A (IV), *Ad Hoc* Pol. Com., 38th-43rd mtgs., pp. 219-246.

49/ The Assembly in resolution 192 (III) had requested the Council to pursue the study of the regulation and reduction of conventional armaments and armed forces through the agency of the Commission for Conventional Armaments and to report to the Assembly at its next regular session. The Council, however, failed to adopt a resolution on the reports of the Commission and therefore instructed the Secretary-General to transmit them to the Assembly for its information.

fourth and fifth sessions adopted one general resolution taking note of the report. 50/ With the exception of a short discussion at the fourth session, 51/ limited to remarks by one speaker, the Assembly has not, in plenary meeting, engaged in a discussion of those draft resolutions. Its discussions on the relevant Committee reports have been concerned with those draft resolutions submitted on individual subjects. No resolution on the report as a whole was adopted at the sixth, seventh or eighth sessions. At the sixth session, the Joint Second and Third Committee in its report 52/ stated that, following the practice of previous sessions, it had decided to recommend to the Assembly that it should take note of chapter I of the report of the Council, on the understanding that this action would, in due course, be incorporated with similar action by other Committees to which parts of the report had been referred, in order to form a single resolution taking note of the report as a whole. At the seventh session, no draft resolution on the report in general was submitted; the Assembly decided, 53/ however, on the proposal of the President, to take note of certain parts of the report considered directly in plenary meeting and to pass on to the next item on the agenda. At the eighth session, the Second and Fifth Committees reported 54/ to the Assembly that they had taken note of the relevant chapters of the report. The Assembly noted these reports and, itself, took note 55/ of those parts of the Council's report considered directly in plenary meeting; it was therefore presumed that the Assembly had taken note of the entire report. Thus, the Assembly's action on the Council's report as a whole has tended to become formal; it has tended to deal individually with the particular questions covered in that report.

34. Under the agenda item "Report of the Economic and Social Council" the Assembly has, however, adopted twelve 56/ resolutions on the operation of the Council covering such subjects as co-ordination of specialized agencies, distribution of membership in subsidiary organs of the Council, organization of the Council and its Commissions, and sessions of the Council's subsidiary bodies. In addition, various resolutions 57/ on co-ordination between the United Nations and the specialized agencies have been adopted on the basis jointly of the Council's report and of other items.

35. The wording of the Assembly's resolutions on the annual reports of the Trusteeship Council has varied, but in each case the Assembly has taken note of the report and has referred to the Council the comments made during the Assembly's discussions. At the second session, 58/ these comments were transmitted to the Council "for consideration in its future work", at the third, fifth and sixth sessions, 59/ the Council was recommended to consider these comments and suggestions and at the seventh and eighth sessions 60/ it was recommended to take them into account. At the sixth session, the Assembly specified that the comments and suggestions included "the

50/ G A resolutions 123 (II), 276 (III), 312 (IV) and 416 (V).

51/ G A (IV), Plen., 272nd mtg., pp. 564 and 565, statement by Chile.

52/ G A (VI), Annexes, a.i. 11, p. 23, A/2113, para. 21.

53/ G A (VIII), Plen., 409th mtg., p. 452.

54/ G A (VIII), Annexes, a.i. 12, pp. 22-23, A/2599 and A/2623.

55/ G A (VIII), Plen., 468th mtg., p. 430; 471st mtg., p. 457.

56/ G A resolutions 125 (II), 199 (III), 206 (III), 207 (III), 409 (V), 419 (V), 420 (V), 526 (VI), 532 (VI), 535 (VI), 542 (VI) and 735 (VIII).

57/ G A resolutions 210 (III), 309 (IV), 310 (IV), 411 (V), 412 (V), 413 (V), 414 (V), 533 (VI) and 534 (VI).

58/ G A resolution 139 (II).

59/ G A resolutions 223 (III), 431 (V) and 559 (VI).

60/ G A resolutions 654 (VII) and 756 (VIII). No general resolution was adopted at the fourth session.

valuable discussions in the Fourth Committee on various specific trusteeship problems" and recommended that they be considered "with a view to arriving at a speedy solution of those problems". At the third session, 61/ the Fourth Committee rejected, by 23 votes to 13, an amendment which would have recommended that the Council include in its next annual report the conclusions it had reached and the action it had taken on the comments and suggestions made during the Assembly's debate. The view was expressed that the amendment was unnecessary since the Council would in any case take the comments into account, and to ask it to report in detail on its action in each case would place too great a burden on it. At the third, fifth and sixth sessions, the Assembly also expressed its confidence that the Council would, in a spirit of co-operation, contribute effectively to the objectives of the Trusteeship System. 62/

36. The fact that at certain sessions these resolutions were voted upon and adopted by varying votes, certain parts of the draft resolutions sometimes 63/ being voted on separately, would also seem to indicate that adoption of the resolutions has involved some measure of acceptance of the reports. However, at the second session, 64/ one representative stated that if the Committee approved the Council's report he would be unable to vote for the draft resolution and suggested that it should merely take note of it, which was agreed to by the Chairman; whereas at the seventh session one of the reasons advanced 65/ by a representative for submitting a draft resolution later adopted was to pay tribute to one of the principal organs of the United Nations. Discussions in plenary meeting of the Fourth Committee's report on the report of the Trusteeship Council have in general been confined to explanations of vote on the draft resolutions recommended by the Fourth Committee on individual subjects, but these have sometimes 66/ involved statements on the working of the Council, and at its fourth session 67/ a general discussion on trusteeship questions was held in plenary meeting.

37. At its fifth session, following a review of the functioning of the Trusteeship Council, the Assembly adopted resolution 433 (V) specifically on the form of future annual reports by the Council. It has also adopted, on the basis of the annual reports, a number of 68/ resolutions on the operation of the Trusteeship Council, for example on petitions, visiting missions and participation of the indigenous inhabitants in the Council's work.

61/ G A (III/1), 4th Com., 68th and 74th mtgs., pp. 192 and 268-270, relevant statements by India, Mexico, United Kingdom and United States. The text of the amendment, by Cuba (A/C.4/146) is reproduced on p. 192.

62/ The wording in each case was slightly different: at the third session, the Assembly expressed its confidence that the Council... "will effectively contribute"; at the fifth session that it will... "continue to contribute effectively" and at the sixth session that it will... "continue to contribute - and with increased effectiveness". At the fifth session the words "will continue to contribute" were voted on separately in the Fourth Committee and were retained by 25 votes to 9, with 11 abstentions, whereas the draft resolution as a whole was adopted by 31 votes to none, with 17 abstentions.

63/ At the fifth session in committee and in plenary, and at the eighth session in committee; see also para. 47 below.

64/ G A (II), 4th Com., 34th mtg., p. 22, statement by the USSR.

65/ G A (VII), 4th Com., 296th mtg., p. 336, statement by Argentina.

66/ For example, G A (VI), Plen., 361st mtg., p. 350, statement by Brazil;

G A (VIII), Plen., 471st mtg., p. 453, statement by Pakistan.

67/ G A (IV), Plen., 239th and 240th mtgs., pp. 173-192.

68/ G A resolutions 321 (IV), 432 (V), 434 (V), 435 (V), 552 (VI), 553 (VI), 554 (VI), 653 (VII) and 751 (VIII).

38. As a general rule, in considering the reports of ad hoc subsidiary bodies, the General Assembly has discussed the subject-matter of the report and the work of these bodies. On the basis of this consideration, it has adopted resolutions containing recommendations to Members and further instructions to the subsidiary body involved. In some instances it has approved the report, referred to particular parts of it, or commended and commented upon the work of the organ. 69/

39. The question of the Assembly's consideration of reports was raised at the seventh and eighth sessions in connexion with the question of measures to limit the duration of regular sessions of the General Assembly.

40. In his memorandum 70/ submitted to the General Assembly at its seventh session, the Secretary-General suggested that it might assist in a more selective establishment of the Assembly's agenda if the Assembly were to indicate, in resolutions calling for reports, whether it was intended that the report in question should be submitted to the General Assembly for consideration or to Members for their information. In the first case it would be included in the provisional agenda of the following session, in the second case not. In the cases where it had not been stipulated that a report should be included in the provisional agenda of a session, any Member would have the right to request that a report which had been circulated, or any specific matter covered by the report, should be included in the agenda.

41. As regards the reports of the Economic and Social Council and the Trusteeship Council, the Secretary-General stated he would not wish to propose any measures which might restrict the opportunities of the Assembly to review the reports, adopt resolutions by Members on topics covered by them or make its own recommendations. He suggested, however, that the Councils should be encouraged to continue the practice of indicating in their annual reports those matters on which they desired that the Assembly should take action and that there should be an early time-limit for the presentation of draft resolutions on matters contained in the reports.

42. These recommendations were embodied in the report 71/ of the Special Committee on Measures to Limit the Duration of Regular Sessions of the General Assembly submitted at the eighth session, the suggestions relating to the work of the Councils being accepted by a majority of that Committee. A draft resolution was submitted in the Sixth Committee, 72/ recommending that an attached outline of the practices recommended by the Special Committee be annexed to the rules of procedure. The suggestions concerning reports were included in the draft annex. An amendment 73/ proposing the deletion of the relevant paragraph of the draft resolution was, however, adopted by 32 votes to 13, with 4 abstentions. 74/

43. Varying views were expressed on these suggestions during the seventh and eighth sessions. As regards the reports of the subsidiary organs, it was suggested, 75/

69/ G A resolutions 195 (III), 214 (III), 288 (IV), 299 (IV), 318 (IV), 362 (IV), 373 (IV), 382 B (V), 394 (V), 512 (VI), 570 (VI), 646 (VII) and 721 (VII).

70/ G A (VII), Annexes, a.i. 50, pp. 2-7, A/2206, paras. 16-24.

71/ G A (VIII), Annexes, a.i. 54, pp. 2-7, A/2402, paras. 16-18, 22 and 23.

72/ G A (VIII), a.i. 54, pp. 7-9, A/C.6/L.292/Rev.1, revised draft resolution submitted by Norway.

73/ G A (VIII), a.i. 54, p. 10, A/C.6/L.296, amendments by Ecuador and Guatemala to the amendments submitted by Brazil and France (A/C.6/L.293) to the Norwegian draft resolution.

74/ G A (VIII), 6th Com. 366th mtg., para. 33.

75/ G A (VII), Plen., 387th mtg., para. 51.

on the one hand, that reports made in response to an Assembly resolution should not be placed on the agenda unless some representative so moved, and, on the other, it was maintained 76/ that it would be contrary to Article 15 for the Assembly not to consider the reports of other organs; the suggestion for limiting such consideration would, it was thought, deprive the General Assembly of its right to deal with matters within its competence, its prerogative to improve the work of the other organs and its power of initiative in the interests of furthering the work of the United Nations.

44. As regards the reports of the Economic and Social Council, and the Trusteeship Council, some representatives 77/ expressed agreement with the suggestions of the Secretary-General and the Committee. It was stated 78/ in this connexion that while some Members not represented on the Economic and Social Council and the Trusteeship Council might wish to express their views on the matters contained in the Councils' reports, in point of fact it had generally been the members of those Councils which had been the most active in the discussions in the Committees of the Assembly; and that there was no proof that the Assembly's contribution to the questions in the jurisdiction of those Councils had been constructive or novel. Emphatic disagreement was expressed 79/ with this view, and it was further maintained that it was the duty of the Assembly to judge and discuss the work of its permanent organs, in which a minority of countries represented the whole Organization. For the Councils rather than the Assembly to decide what questions in their reports should be discussed would, it was also stated, 80/ limit the rights of the Assembly and be contrary to the Charter. It was also objected 81/ that the recommendation for a time-limit on the presentation of draft resolutions on the reports of the Councils might prevent representatives from submitting draft resolutions in the course of the debate.

3. Reports as basis for consideration of individual questions

45. No draft resolutions concerning individual questions have been submitted under the agenda items relating to the annual reports of the Secretary-General 82/ and the Security Council. On the other hand, many of the draft resolutions subsequently adopted by the General Assembly have been presented during the consideration of the annual reports of the Economic and Social Council and the Trusteeship Council. A total of twenty-six of the forty-one resolutions adopted by the General Assembly on trusteeship questions (not counting those relating to the actual operation of the Council, for which see above, para. 36) have been introduced in connexion with the item relating to the regular annual reports of that Council. The practice has been 83/ for the Assembly's Fourth Committee, following its general debate on the report, to

76/ G A (VIII), 6th Com., 361st mtg., para. 17.

77/ G A (VII), Plen., 387th mtg., para. 34; G A (VIII), 6th Com., 361st mtg., para. 41.

78/ G A (VII), Plen., 387th mtg., para. 34.

79/ Ibid. paras. 63-65.

80/ Ibid. 388th mtg., para. 43.

81/ G A (VIII), 6th Com., 363rd mtg., para. 4.

82/ Reference was however made to the Secretary-General's annual report in resolution 114 (II) on relations of Members of the United Nations with Spain.

83/ At every session after the second, when one resolution was adopted following consideration of the report.

consider the various draft resolutions submitted under this item. Parts of the Council's report have also sometimes formed the subject of separate agenda items. 84/

46. In the case of the Economic and Social Council, also, draft resolutions on individual questions have been submitted in committee. They account for thirty-three resolutions subsequently adopted by the General Assembly (not counting those relating to the actual operation of the Council, for which see para. 33 above). Parts of the Council's report have also formed the subject of other agenda items. 85/

C. Procedure for consideration of reports 86/

1. Consideration directly in plenary meeting and in committee

47. The annual report of the Security Council was considered at the first part of the first session and at the second session in the First Committee, at the second part of the third session 87/ and at the fourth 87/ fifth and sixth sessions in the Ad Hoc Political Committee and at the seventh and eighth sessions in plenary meeting without reference to a Committee.

48. The annual report of the Economic and Social Council was considered at the second part of the first session in the Joint Second and Third Committee. 88/ Thereafter, various chapters of the report were referred to different Committees, the chapter or chapters dealing with economic questions being considered in the Second Committee and the chapter or chapters dealing with social questions being considered in the Third Committee. 89/ At the second, 90/ third, fourth, fifth and sixth sessions, other

84/ For example, at the sixth session the parts of the Council's report relating to the rural economic development of the Trust Territories (agenda item 33) and administrative unions affecting Trust Territories (agenda item 35) formed the subject of separate agenda items.

85/ For example, at the eighth session of the General Assembly, the parts of the Council's report on the economic development of under-developed areas (agenda item 26) and the Expanded Programme of Technical Assistance for the economic development of under-developed countries (agenda item 27) were the subject of separate agenda items. The subjects of other items, for example, the question of assistance to Libya (agenda item 60) were also discussed on the basis of the Council's annual report.

86/ For allocation of agenda items, see G A (I/2), Plen., 46th mtg., p. 933; G A (II), Plen., 91st mtg., p. 302; G A (III/1), Plen., 142nd mtg., p. 110; G A (IV), Plen., 224th mtg., p. 23; G A (V), Plen., vol. I, 285th mtg., p. 119; G A (VI), Plen., 342nd mtg., p. 104; G A (VII), Plen., 382nd mtg., p. 73; G A (VIII), Plen., 435th mtg., p. 33.

87/ Allocated to 1st Com. and then re-allocated to Ad Hoc Political Com.; G A (III/1), Plen., 158th mtg., p. 473; G A (IV), Plen., 238th mtg., p. 172.

88/ The Chairman of the Committee, however, suggested that, since the major parts of the items included in the report had been referred to various Committees, the Joint Committee should limit its discussion to the items not already assigned to other Committees (G A (II/1), Joint 2nd and 3rd Com., 1st mtg., p. 1).

89/ In some instances part of the report formed the subject of a separate agenda item, for example, chapter II A on economic development, considered at the fourth session.

90/ At the second session these chapters were initially allocated to the Second Committee, but the Second and Third Committees were authorized to establish a Joint Second and Third Committee and to refer to it such matters as they considered necessary.

chapters of the report, e.g., those dealing with constitutional and organizational questions, questions of co-ordination with specialized agencies, relations with non-governmental organizations and general economic and social questions were referred to a Joint Second and Third Committee. At the fourth, fifth and sixth sessions 91/ the part of the report relating to co-ordination with specialized agencies was allocated for consideration in a joint meeting of the Fifth Committee with the Joint Second and Third Committee. At the fourth and sixth sessions, the chapters relating to budgetary implications of the Council's decisions were specifically allocated to the Fifth Committee. At the seventh and eighth sessions no Joint Second and Third Committee was established and those parts of the report not allocated to the Second or the Third Committees were considered directly in plenary meeting.

49. The annual report of the Trusteeship Council was at each session referred to the Fourth Committee.

50. Reports of principal organs on individual subjects and reports of subsidiary organs have been allocated according to their subject-matter.

2. Linking with other agenda items and other reports

51. The General Assembly has not linked its consideration of the annual reports of the Security Council with that of any other matter, but frequently it has considered parts of the annual report of the Economic and Social Council simultaneously with other reports before it. 92/ Parts of the Council's report have frequently been considered in conjunction with reports from the Secretary-General. 93/ Parts of the report of the Council on co-ordination between the United Nations and the specialized agencies have also been considered, for example, at the fifth session, under agenda item 29, in conjunction with a report of the Advisory Committee on Administrative and Budgetary Questions as well as with the Annex to the budget estimates and a report from the Secretary-General. 94/

52. More rarely have parts of the Trusteeship Council's report been considered in conjunction with other matters, but at the fourth session the chapter relating to South West Africa was considered under agenda item 34 together with a letter from the Deputy Permanent Representative of the Union of South Africa to the Secretary-General; 95/ at the sixth session, part of the report on the abolition of corporal punishment in Trust Territories was considered together with a memorandum submitted by the United Kingdom 96/ under the relevant agenda item.

91/ At the third session it was subsequently agreed that parts of the report relating to programme, budgetary and administrative co-ordination should be considered at joint meetings of the Joint Second and Third Committee and of the Fifth Committee (see G A (III/1), Plen., Annexes, p. 327, A/711 and Corr.1, para. 2).

92/ For example see G A (VIII), Annexes, a.i. 12, p. 11, A/2573 and Corr.1, para. 2; chapters IV and V of the Council's report were considered in conjunction with agenda items 28, 62, 63, 65, 66 and 69.

93/ For example, at the eighth session agenda items 26, 27 and 61 were considered by the Second Committee on the basis jointly of chapters of the Council's report and of a memorandum by the Secretary-General (A/2447 and Corr.1).

94/ G A (V), Joint 2nd and 3rd Com., 48th-51st mtgs., pp. 21-46.

95/ G A (IV), 4th Com., Annexes, pp. 7-12, a.i. 34, A/929.

96/ G A (VI), Annexes, a.i. 34, p. 1, A/1965.

53. Reports from subsidiary organs have also frequently been considered jointly; for example, at the sixth session the First Committee considered together 97/ the report of the United Nations Commission for the Unification and Rehabilitation of Korea and the report of the United Nations Agent General for Korean Reconstruction (agenda items 17 and 27) and the Third Committee considered together 98/ the reports of the International Refugee Organization, the United Nations High Commissioner for Refugees and the part of the Economic and Social Council's report relating to refugees (agenda items 30 and 31).

3. Voting on reports

54. The General Assembly has frequently adopted draft resolutions taking note of the Security Council's annual report "in the absence of objections" or "unanimously". Such draft resolutions were, however, voted on at the fourth, fifth and sixth sessions 99/ in committee and at the third, fifth and sixth sessions 100/ in plenary meeting, abstentions being recorded in each instance.

55. Draft resolutions or motions taking note of the annual report of the Economic and Social Council, or part of it, have not usually been voted on in committee, although such a draft resolution was voted on 101/ at the second part of the first session in the Joint Second and Third Committee and at the first part of the third session in the Third Committee, votes against and abstentions being recorded in the first instance and abstentions in the second. At the fifth session, 102/ although a formal vote was not taken, one representative requested that his abstention be recorded. Draft resolutions to take note of the report were voted on in plenary meeting at the first, fourth and fifth sessions, 103/ abstentions being recorded at the first and fifth sessions; at the second and third sessions 104/ such resolutions were adopted without objection and at the sixth, seventh and eighth sessions 105/ no resolution on the report as a whole was adopted.

97/ G A (VI), 1st Com., 507th and 508th mtgs. (held jointly with the Joint 2nd and 3rd Com.), pp. 287-301.

98/ G A (VI), 3rd Com., 373rd-386th mtgs., pp. 151-233.

99/ G A (I/2), Plen., 55th mtg., p. 1133, 1st Com., 41st mtg., p. 283; (II), Plen., 122nd mtg., p. 1216, 1st Com., 116th mtg., p. 527; (III/2), Ad Hoc Pol. Com., 32nd mtg., p. 47; (IV), Plen., 252nd mtg., p. 334; (VII), Plen., 390th mtg., p. 178; (VIII), Plen., 455th mtg., p. 262.

100/ G A (III/2), Plen., 199th mtg., p. 211; (IV), Ad Hoc Pol. Com., 40th mtg., p. 227; (V), Plen., vol. I, 325th mtg., p. 681, Ad Hoc Pol. Com., 78th mtg., p. 500; (VI), Plen., 370th mtg., p. 470, Ad Hoc Pol. Com., 54th mtg., p. 307.

101/ G A (I/2) Joint 2nd and 3rd Com., 3rd mtg., p. 22; (III/1), 3rd Com., 180th mtg., p. 898.

102/ G A (V) Joint 2nd and 3rd Com., 56th mtg., p. 76.

103/ G A (I/2), Plen., 69th mtg., p. 1414; (IV), Plen., 272nd mtg., p. 565; (V), Plen., vol. I, 325th mtg., p. 666.

104/ G A (II), Plen., 117th mtg., p. 1025; (III/2), Plen., 211th mtg., p. 427.

105/ G A (VII), Plen., 409th mtg., p. 452; (VIII), Plen., 471st mtg., p. 457.

56. The practice of the General Assembly with respect to the report of the Trusteeship Council has also varied. Thus, at the second and sixth sessions in the Fourth Committee and at the second, third and sixth sessions in plenary meeting, the draft resolution on the report as a whole was adopted without a vote. ^{106/} At the third session it was unanimously adopted by vote in committee; at the Fifth, seventh and eighth sessions ^{107/} abstentions were recorded both in committee and in plenary meeting.

ANNEX I

Reports of principal organs to the General Assembly
with the relevant agenda items

Reports of the Security Council to the Agenda
General Assembly, covering period: Item

17 January to 15 July 1946	G A (I/2), Suppl. No. 1 (A/93)	7
16 July 1946 to 15 July 1947	G A (II), Suppl. No. 2 (A/366)	10
16 July 1947 to 15 July 1948	G A (III/1), Suppl. No. 2 (A/620)	10
16 July 1948 to 15 July 1949	G A (IV), Suppl. No. 2 (A/945)	10
16 July 1949 to 15 July 1950	G A (V), Suppl. No. 2 (A/1361)	11
16 July 1950 to 15 July 1951	G A (VI), Suppl. No. 2 (A/1873)	10
16 July 1951 to 15 July 1952	G A (VII), Suppl. No. 2 (A/2167)	10
16 July 1952 to 15 July 1953	G A (VIII), Suppl. No. 2 (A/2437)	11

Reports of the Economic and Social Council,
covering period:

23 January to 3 October 1946	G A (I/2), Suppl. No. 2 (A/125)	46
3 October 1946 to 17 August 1947	G A (II), Suppl. No. 3 (A/382)	11
18 August 1947 to 29 August 1948	G A (III/1), Suppl. No. 3 (A/625)	11
30 August 1948 to 15 August 1949	G A (IV), Suppl. No. 3 (A/972)	11
16 August 1949 to 16 August 1950	G A (V), Suppl. No. 3 (A/1345)	12
16 August 1950 to 21 September 1951	G A (VI), Suppl. No. 3 (A/1884)	11
22 September 1951 to 1 August 1952	G A (VII), Suppl. No. 3 (A/2172)	11
2 August 1952 to 5 August 1953	G A (VIII), Suppl. No. 3 (A/2430)	12

Reports of the Trusteeship Council,
covering:

Its first session	G A (II), Suppl. No. 4 (A/312)	12
26 March to 28 April 1947		
Its second and third sessions	G A (III/1), Suppl. No. 4 (A/603)	12
29 April 1947 to 5 August 1948		

^{106/} G A (II), Plen., 104th mtg., p. 569, 4th Com., 34th mtg., p. 24; (III/1), Plen., 159th mtg., p. 480; (VI), Plen., 361st mtg., p. 550; 4th Com., 241st mtg., p. 271.

^{107/} G A (III/1), 4th Com., 74th mtg., p. 271; (V), Plen., vol. I, 316th mtg., p. 547; 4th Com., 154th mtg., pp. 65 and 66; (VII), Plen., 410th mtg., p. 472; 4th Com., 299th mtg., p. 355; (VIII), Plen., 471st mtg., p. 455; 4th Com., 392nd mtg., p. 523. No general resolution was adopted at the fourth session.

	Article 15	Annexes
Its fourth and fifth sessions 6 August 1948 to 22 July 1949	G A (IV), Suppl. No. 4 (A/933)	12
Its first special session, its second special session, and its sixth and seventh sessions 23 July 1949 to 21 July 1950	G A (V), Suppl. No. 4 (A/1306)	13
Its third special session and its eighth and ninth sessions 22 November 1950 to 30 July 1951	G A (VI), Suppl. No. 4 (A/1856)	12
Its fourth special session and its tenth and eleventh sessions 18 December 1951 to 24 July 1952	G A (VII), Suppl. No. 4 (A/2150)	12
Period from 4 December 1952 to 21 July 1953	G A (VIII), Suppl. No. 4 (A/2427)	13

Reports of the Secretary-General on the
Work of the Organization:

30 June 1946	A/65	6
14 July 1947	G A (II), Suppl. No. 1 (A/315)	9
1 July 1947 - 30 June 1948	G A (III/1), Suppl. No. 1 (A/565)	9
1 July 1948 - 30 June 1949	G A (IV), Suppl. No. 1 (A/930)	9
1 July 1949 - 30 June 1950	G A (V), Suppl. No. 1 (A/1287)	10
1 July 1950 - 30 June 1951	G A (VI), Suppl. No. 1 (A/1844)	9
<u>Introduction</u>	G A (VI), Suppl. No. 1 A (A/1844/Add.1)	9
1 July 1951 - 30 June 1952	G A (VII), Suppl. No. 1 (A/2141)	9
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ARTICLE 16

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TEXT OF ARTICLE 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

INTRODUCTORY NOTE

1. Article 16 has not been cited as the basis for any action taken by the General Assembly with respect to the International Trusteeship System. For that reason, the present study contains no analysis of practice and is restricted to a General Survey of the Assembly's actions with respect to the Trusteeship System which have also been treated, as appropriate, in the studies on the pertinent Articles in Chapters XII and XIII of the Charter.

GENERAL SURVEY

2. Article 16 first states the general principle that the functions which the General Assembly performs with respect to the International Trusteeship System shall be those assigned to it under Chapters XII and XIII of the Charter and then makes mention of one specific function, that of approving trusteeship agreements for areas not designated as strategic. The Article neither adds to nor detracts from the General Assembly's responsibilities as defined in Chapters XII and XIII, chiefly under Articles 85 and 87.

3. Article 85 (1) in Chapter XII provides that the General Assembly shall approve the trusteeship agreements for areas not designated as strategic. By resolution 63 (I) adopted at its 62nd plenary meeting, on 13 December 1946, the General Assembly approved separately the following eight Trusteeship Agreements:

1. The proposed Trusteeship Agreement for New Guinea submitted by the Government of Australia (A/153/Rev.2).
2. The proposed Trusteeship Agreement for Ruanda-Urundi submitted by the Government of Belgium (A/159/Rev.2).
3. The proposed Trusteeship Agreement for the Cameroons under French mandate submitted by the Government of France (A/155/Rev.2).
4. The proposed Trusteeship Agreement for Togoland under French mandate submitted by the Government of France (A/154/Rev.2).
5. The proposed Trusteeship Agreement for Western Samoa submitted by the Government of New Zealand (A/160/Rev.2).
6. The proposed Trusteeship Agreement for Tanganyika submitted by the Government of the United Kingdom (A/152/Rev.2).

7. The proposed Trusteeship Agreement for the Cameroons under British mandate submitted by the Government of the United Kingdom (A/151/Rev.2).
8. The proposed Trusteeship Agreement for Togoland under British mandate submitted by the Government of the United Kingdom (A/150/Rev.2).
4. At its 104th plenary meeting, on 1 November 1947, by resolution 140 (II), the General Assembly approved the proposed Trusteeship Agreement 1/ for Nauru submitted by the Governments of Australia, New Zealand and the United Kingdom.
5. Having recommended, by resolution 289 A (IV) adopted on 21 November 1949, that Italian Somaliland should be placed under the International Trusteeship System with Italy as the Administering Authority and that the Trusteeship Council should negotiate with the Administering Authority the draft of a trusteeship agreement, the General Assembly, by resolution 442 (V), adopted at its 316th plenary meeting on 2 December 1950, approved the draft trusteeship agreement thus submitted.
6. Article 85 (1), in addition to reiterating the provisions of Article 16 that the General Assembly shall approve the trusteeship agreements for areas not designated as strategic, also stipulates that the General Assembly shall approve alterations or amendments to such agreements. No alterations or amendments have been made to date.
7. The only other Article in either Chapter XII or XIII which expressly assigns functions to the General Assembly with respect to the International Trusteeship System is Article 87. This Article empowers the General Assembly and, under its authority, the Trusteeship Council to take certain measures in discharging its supervisory function over all areas not designated as strategic. Thus, the General Assembly may consider reports submitted by the Administering Authority; may accept petitions and examine them in consultation with the Administering Authority; may provide for periodic visits to the respective Trust Territories at times agreed upon with the Administering Authority; may take other actions in conformity with the terms of the trusteeship agreements. The study on Article 87 in this Repertory shows how the General Assembly has undertaken these functions. It may be noted here, however, that, although it has adopted resolutions of a procedural nature in connexion with Article 87 (a) and (c), the General Assembly has taken no direct action itself to examine the annual reports of the Administering Authorities and to dispatch visiting missions. This has been done by the Trusteeship Council. In connexion with Article 87 (b), the Fourth Committee of the General Assembly has granted oral hearings to petitioners and has examined written petitions from Trust Territories, and the General Assembly has in plenary session adopted resolutions in this regard.
8. Each year the General Assembly has adopted resolutions pertaining to the International Trusteeship System on the report of its Fourth Committee to which it has

1/ A/402/Rev.1.

allocated for examination the annual report of the Trusteeship Council 2/ submitted to the General Assembly under Article 15 of the Charter. From its first to its ninth session inclusive, the General Assembly has adopted seventy-eight such resolutions containing invitations, suggestions and recommendations with respect to the International Trusteeship System. Although these are treated substantively in this Repertory in the studies on the Articles in Chapters XII and XIII as appropriate, the annex to the present study lists all General Assembly resolutions that pertain to the International Trusteeship System. It will be noted that, while these resolutions were in the main directed toward the attainment of the objectives of the Trusteeship System as expressed in Article 76, the list also includes the General Assembly resolutions relating to the placing of the Territory of South West Africa under the International Trusteeship System. The actions taken by the General Assembly to elect members to the Trusteeship Council are treated in this Repertory in the study on Article 86.

2/ Thus, for example, General Assembly resolution 559 (VI) which reads:

"The General Assembly

"1. Takes note of the report of the Trusteeship Council covering its third special session and its eighth and ninth sessions;

"2. Expresses its confidence that the Trusteeship Council, in a spirit of genuine undertaking and co-operation, will continue to contribute -- and with increased effectiveness -- to achieving the high objectives of the International Trusteeship System;

"3. Recommends that the Trusteeship Council consider at its next sessions the comments and suggestions made during the discussion of the report at the sixth session of the General Assembly, including the valuable discussions in the Fourth Committee on various specific trusteeship problems, with a view to arriving at a speedy solution of those problems."

Note also General Assembly resolutions 139 (II), 223 (III), 431 (V), 654 (VII), 756 (VIII), 857 (IX).

ANNEX

List of General Assembly resolutions pertaining
to the International Trusteeship System

(adopted from the first to the ninth sessions inclusive)

Resolution No.	Date	Plenary meeting	Title
<u>First session</u>			
11 (I)	9 Feb. 1946	27th	Part 1. Non-Self-Governing Peoples Part 2. Provisional Rules of Procedure of the Trusteeship Council
63 (I)	13 Dec. 1946	62nd	Approval of Trusteeship Agreements
64 (I)	14 Dec. 1946	63rd	Establishment of the Trusteeship Council
65 (I)	14 Dec. 1946	64th	Future Status of South West Africa
<u>Second session</u>			
139 (II)	1 Nov. 1947	104th	Report of the Trusteeship Council covering its first session
140 (II)	1 Nov. 1947	104th	Proposed Trusteeship Agreement for Nauru
141 (II)	1 Nov. 1947	105th	Consideration of proposed new trusteeship agreements, if any: question of South West Africa
<u>Third session</u>			
223 (III)	18 Nov. 1948	159th	Report of the Trusteeship Council covering its second and third sessions
224 (III)	18 Nov. 1948	160th	Administrative unions affecting Trust Territories
225 (III)	18 Nov. 1948	160th	Educational advancement in Trust Territories
226 (III)	18 Nov. 1948	160th	Progressive development of Trust Territories
227 (III)	26 Nov. 1948	164th	Question of South West Africa

Resolution No.	Date	Plenary meeting	Title
<u>Fourth session</u>			
289 A (IV)	21 Nov. 1949	250th	Question of the disposal of the former Italian colonies
320 (IV)	15 Nov. 1949	240th	Political advancement of Trust Territories
321 (IV)	15 Nov. 1949	240th	International Trusteeship System: petitions and visiting missions
322 (IV)	15 Nov. 1949	240th	Economic advancement in Trust Territories
323 (IV)	15 Nov. 1949	240th	Social advancement in Trust Territories
324 (IV)	15 Nov. 1949	240th	Educational advancement in Trust Territories
325 (IV)	15 Nov. 1949	240th	Use of the flag of the United Nations in Trust Territories
326 (IV)	15 Nov. 1949	240th	Administrative unions affecting Trust Territories
337 (IV)	6 Dec. 1949	269th	Question of South West Africa: reiteration of previous resolutions and submission of reports
338 (IV)	6 Dec. 1949	269th	Question of South West Africa: request for an advisory opinion of the International Court of Justice
<u>Fifth session</u>			
431 (V)	2 Dec. 1950	316th	Report of the Trusteeship Council covering its first special session, its second special session, and its sixth and seventh sessions
432 (V)	2 Dec. 1950	316th	General procedure of the Trusteeship Council
433 (V)	2 Dec. 1950	316th	Annual reports of the Trusteeship Council
434 (V)	2 Dec. 1950	316th	Organization and methods of functioning of visiting missions
435 (V)	2 Dec. 1950	316th	Examination of petitions
436 (V)	2 Dec. 1950	316th	Information on the implementation of Trusteeship Council and General Assembly resolutions relating to Trust Territories
437 (V)	2 Dec. 1950	316th	Educational advancement in Trust Territories

Resolution No.	Date	Plenary meeting	Title
<u>Fifth session (cont'd)</u>			
438 (v)	2 Dec. 1950	316th	Rural economic development of the Trust Territories
439 (v)	2 Dec. 1950	316th	Technical assistance for Trust Territories
440 (v)	2 Dec. 1950	316th	Abolition of corporal punishment in Trust Territories
441 (v)	2 Dec. 1950	316th	The Ewe problem
442 (v)	2 Dec. 1950	316th	Trusteeship Agreement for the Territory of Somaliland under Italian administration
443 (v)	12 Dec. 1950	320th	Administrative unions affecting Trust Territories
449 (v)	13 Dec. 1950	322nd	Question of South West Africa
<u>Sixth session</u>			
550 (VI)	7 Dec. 1951	352nd	Question of the full participation of Italy in the work of the Trusteeship Council
552 (VI)	18 Jan. 1952	361st	Examination of petitions
553 (VI)	18 Jan. 1952	361st	Organization and methods of functioning of visiting missions
554 (VI)	18 Jan. 1952	361st	Participation of the indigenous inhabitants of the Trust Territories in the work of the Trusteeship Council
555 (VI)	18 Jan. 1952	361st	The Ewe and Togoland unification problem
556 (VI)	18 Jan. 1952	361st	Dissemination of information on the United Nations and on the International Trusteeship System in Trust Territories
557 (VI)	18 Jan. 1952	361st	Educational advancement in Trust Territories
558 (VI)	18 Jan. 1952	361st	Attainment by the Trust Territories of the objective of self-government or independence
559 (VI)	18 Jan. 1952	361st	Report of the Trusteeship Council
560 (VI)	18 Jan. 1952	361st	Information on the implementation of Trusteeship Council and General Assembly resolutions relating to Trust Territories

Resolution No.	Date	Plenary meeting	Title
<u>Sixth session (cont'd)</u>			
561 (VI)	18 Jan. 1952	361st	Rural economic development of the Trust Territories
562 (VI)	18 Jan. 1952	361st	Abolition of corporal punishment in Trust Territories
563 (VI)	18 Jan. 1952	361st	Administrative unions affecting Trust Territories
570 (VI)	19 Jan. 1952	362nd	Question of South West Africa
<u>Seventh session</u>			
649 (VII)	20 Dec. 1952	409th	Administrative unions affecting Trust Territories
651 (VII)	20 Dec. 1952	409th	Question of South West Africa
652 (VII)	20 Dec. 1952	409th	The Ewe and Togoland unification problem
653 (VII)	21 Dec. 1952	410th	Participation of the indigenous inhabitants of the Trust Territories in the government of those Territories and in the work of the Trusteeship Council
654 (VII)	21 Dec. 1952	410th	Report of the Trusteeship Council
655 (VII)	21 Dec. 1952	410th	Hearing of petitioners from the Trust Territory of the Cameroons under French administration
656 (VII)	21 Dec. 1952	410th	Hearing of petitioners from the Trust Territory of Somaliland under Italian administration
<u>Eighth session</u>			
749 (VIII)	28 Nov. 1953	460th	Question of South West Africa
750 (VIII)	8 Dec. 1953	469th	The Togoland unification problem
751 (VIII)	9 Dec. 1953	471st	Revision of the Questionnaire relating to Trust Territories
752 (VIII)	9 Dec. 1953	471st	Attainment by the Trust Territories of the objective of self-government or independence

Resolution No.	Date	Plenary meeting	Title
<u>Eighth session (cont'd)</u>			
753 (VIII)	9 Dec. 1953	471st	Educational advancement in Trust Territories: offers by Member States of study and training facilities
754 (VIII)	9 Dec. 1953	471st	Dissemination of information on the United Nations and on the International Trusteeship System in Trust Territories
755 (VIII)	9 Dec. 1953	471st	Attainment of independence by the Trust Territory of Somaliland under Italian administration by 1960
756 (VIII)	9 Dec. 1953	471st	Report of the Trusteeship Council
757 (VIII)	9 Dec. 1953	471st	Petitions from the Ngoa-Ekélé Community, Cameroons under French administration, concerning adjustment of their land complaint
758 (VIII)	9 Dec. 1953	471st	Hearing of petitioners from the Trust Territory of the Cameroons under French administration
<u>Ninth session</u>			
844 (IX)	11 Oct. 1954	494th	Procedure for the examination of reports and petitions relating to the Territory of South West Africa
851 (IX)	23 Nov. 1954	501st	Report of the Committee on South West Africa
852 (IX)	23 Nov. 1954	501st	Status of the Territory of South West Africa
853 (IX)	14 Dec. 1954	512th	Participation of the indigenous inhabitants of the Trust Territories in the work of the Trusteeship Council
854 (IX)	14 Dec. 1954	512th	Question of the frontier between the Trust Territory of Somaliland under Italian administration and Ethiopia
855 (IX)	14 Dec. 1954	512th	Financing of the economic development plans of the Trust Territory of Somaliland under Italian administration
856 (IX)	14 Dec. 1954	512th	Form of the annual report of the Trusteeship Council to the General Assembly

Resolution No.	Date	Plenary Meeting	Title
<u>Ninth session (cont'd)</u>			
857 (IX)	14 Dec. 1954	512th	Report of the Trusteeship Council covering the period from 22 July 1953 to 16 July 1954
858 (IX)	14 Dec. 1954	512th	Attainment by the Trust Territories of the objective of self-government or independence
859 (IX)	14 Dec. 1954	512th	Hearings of petitioners from the Trust Territory of the Cameroons under French administration
860 (IX)	14 Dec. 1954	512th	The Togoland unification problem and the future of the Trust Territory of Togoland under British administration

ARTICLE 17 (1)

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TEXT OF ARTICLE 17 (1)

The General Assembly shall consider and approve the budget of the Organization.

INTRODUCTORY NOTE

1. This study is an analysis of the practice of the General Assembly in regard to the budget of the Organization. It also deals with the various questions that have arisen in connexion with the exercise by the General Assembly of its budgetary functions under Article 17 (1).

2. The first section of the Summary of Practice examines the scope of the budget. The second section is concerned with the procedures developed by the General Assembly for considering and approving the budget, and the third deals with the steps taken by the Assembly to provide for the proper administration of the budget. The fourth section examines the scope and extent of the powers of the General Assembly to approve expenditures, while the fifth section is concerned with the extent of the control of the Assembly over budgetary expenditures. The sixth and last section deals with the steps taken by the General Assembly to regulate the financing of a number of United Nations assistance programmes which have been supported either wholly or partially out of extra-budgetary funds.

3. The Financial Regulations of the United Nations set out in broad terms what the budget consists of and the procedure to be followed for having the budget considered and approved by the General Assembly. The Financial Regulations also provide for the auditing of all budgetary expenditures, and indicate the procedures to be followed by the organs and by other competent bodies of the United Nations for taking decisions involving expenditures.

4. The General Assembly has entrusted the Secretary-General with the responsibility of preparing and of transmitting the budget to it for consideration and approval. The budget passes through three stages before it is finally approved by the General Assembly in plenary meeting. Firstly, it is reviewed by the Advisory Committee on Administrative and Budgetary Questions, an expert committee of the Assembly which has charged it with the responsibility of making an examination of the budget of the United Nations. Secondly, the budget is considered by the Fifth Committee of the Assembly, which deals with administrative and budgetary matters, and finally it is considered and approved by the Assembly in plenary meeting on the basis of the recommendations of the Fifth Committee.

SUMMARY OF PRACTICE

A. The scope of the budget

1. *What the budget comprises*

5. The budget estimates of the United Nations expenditures and of miscellaneous income received by the Organization are drawn up by the Secretary-General on an annual basis, ^{1/} the financial year for this purpose being the period from 1 January to 31 December. ^{2/} The United Nations budget consists of these budget estimates, as approved by the General Assembly. ^{3/} The budget is financed from the contributions of the Members, ^{4/} and from revenue derived from miscellaneous income.

6. The budget estimates of expenditures are divided into parts, sections, chapters, and articles and are accompanied by "such information annexes and explanatory statements as may be requested by, or on behalf of, the General Assembly, and such further annexes or statements as the Secretary-General may deem necessary and useful". ^{5/}

7. The budget estimates of expenditures represent the estimated cost of implementing the decisions of the General Assembly, of the Councils and of all other competent bodies of the Organization during the course of the financial year to which the budget relates. ^{6/}

8. The budget estimates of miscellaneous income cover all revenues which the Organization expects to receive other than the contributions of Member States. These estimates are listed in the annual budget estimates in the form of a simple schedule to which an explanatory note is attached, and cover such items as assessment on the salaries and allowances of staff, sales of United Nations postage stamps, interest on investments, et cetera. ^{7/}

2. *Revised budget estimates*

9. Between the time of the preparation of the original budget estimates by the Secretary-General and the time of their consideration by the General Assembly, new decisions entailing either additional expenditure or additional miscellaneous income or both, are often taken by one or more of the organs of the United Nations. In each such case, revised estimates are prepared in the same way as the original estimates,

^{1/} G A resolution 456 (V), Annex, financial regulations 3.1, 3.2 and 3.4.

^{2/} Financial regulation 2.1.

^{3/} Financial regulation 3.7.

^{4/} For a discussion of how the General Assembly apportions the expenses of the United Nations amongst the Members, see in this Repertory under Article 17 (2).

^{5/} Financial regulation 3.3.

^{6/} For an example of how budget estimates are drawn up, see G A (IX), Suppl. No. 5 (A/2647), pp. 3-22.

^{7/} For an example of how the budget estimates of miscellaneous income are listed, see G A (IX), Suppl. No. 5 (A/2647), pp. 106 and 107.

and are submitted to the General Assembly, which eventually consolidates the amounts into a single appropriation resolution covering the ensuing year. 8/

3. *Supplementary estimates*

10. While the budget relates to a single financial year, action by the General Assembly regarding the estimates is normally spread over two sessions. Thus, the initial estimates for the financial year 1954 were approved in December 1953. 9/ The final budget appropriations for 1954 were approved in November 1954, after the review by the General Assembly of supplementary estimates for 1954 10/ submitted by the Secretary-General.

11. These supplementary estimates are made necessary by the fact that, after the budget has been voted, and during the financial year to which it relates, unforeseen or extraordinary expenses usually arise for which no funds are available in the approved budget. 11/ The General Assembly, as a matter of practice, has defined unforeseen expenses as expenses incidental to the carrying out of a programme in accordance with policies approved by the General Assembly and which were not foreseen when the original estimates were made and approved. It has also defined extraordinary expenses as expenses outside the scope of the programmes on which the approved estimates were based under General Assembly resolution 68 C (I) relating to the Working Capital Fund.

12. At each session, the General Assembly has given the Secretary-General limited conditional authority to meet such unforeseen and extraordinary expenses from the United Nations Working Capital Fund. 12/ The Secretary-General has, however, been required to submit supplementary budget estimates at the subsequent session of the

8/ Two examples illustrate this action:

(a) Pursuant to General Assembly resolution 533 C (VI), the Secretary-General has issued, wherever necessary, revised estimates for activities stemming from decisions of the Economic and Social Council which have financial implications. Before the report of the Secretary-General is considered in the Fifth Committee, it is reported on by the Advisory Committee. For example, the relevant documents discussed at the ninth session of the General Assembly are A/C.5/582 and Corr.1, and A/2763.

(b) The original budget estimates for 1955 included a provision for holding the seventh session of the International Law Commission at Headquarters. At its sixth session, the Commission decided that its next session should be held in Geneva. The Fifth Committee, before taking action to recommend the necessary appropriation, considered the revised estimates submitted by the Secretary-General pursuant to the Commission's decision (A/C.5/587), and the observations of the Advisory Committee on these estimates (A/2766).

9/ G A resolution 786 (VIII).

10/ G A resolution 881 (IX).

11/ Thus, in 1954 a summary of such expenditures which occurred during 1954 was contained in table II on page 5 in the report of the Secretary-General entitled "Supplementary Estimates for the Financial Year 1954" (A/2792 and Corr.1).

12/ For an example of this type of resolution, see G A resolutions 787 (VIII) and 788 (VIII). For a brief account regarding the composition and functions of the Working Capital Fund, see in this Repertory under Article 17 (2).

General Assembly to cover the expenditures incurred. ^{13/} The supplementary estimates, if approved, have then been consolidated with the amounts approved at the previous session in the original estimates, resulting in new appropriation figures for particular sections of the budget. ^{14/}

B. The process of considering and approving the budget

1. *The responsibility for the preparation and transmittal of the budget to the General Assembly*

13. Under the Financial Regulations, the Secretary-General has been made responsible for the preparation and transmittal of the annual budget to the General Assembly. ^{15/} He must submit to all Member States, at least five weeks prior to the opening of the regular session of the General Assembly, the budget estimates for the following financial year. ^{16/} These estimates must be submitted by the Secretary-General to the Advisory Committee on Administrative and Budgetary Questions at least twelve weeks prior to the opening of the regular session of the General Assembly. ^{17/}

14. The Secretary-General has similar responsibilities with respect to the preparation and transmittal of supplementary budget estimates. ^{18/}

2. *How the budget is considered and approved by the General Assembly*

15. The actual process of considering the budget by the General Assembly itself opens with the examination of the budget estimates by the Advisory Committee on Administrative and Budgetary Questions. ^{19/} The Advisory Committee in turn makes its report to the General Assembly. The next stage is the review of the budget estimates by the Fifth Committee, which always has before it as working documents the budget estimates and the

^{13/} The General Assembly, by its resolution 786 (VIII), approved a level of appropriations for the financial year 1954. Supplementary estimates, which took into account unforeseen and extraordinary expenses, governed by General Assembly resolution 787 (VIII), were submitted by the Secretary-General in his report, document A/2792 and Corr.1. The report of the Advisory Committee on these estimates is contained in document A/2813.

^{14/} G A resolution 881 (IX), approved on the recommendation of the Fifth Committee (document A/2839), increased the amount of the budget for 1954 as appropriated by G A resolution 786 (VIII).

^{15/} Financial regulation 3.1.

^{16/} Financial regulation 3.4.

^{17/} Financial regulation 3.5. The Advisory Committee is an expert committee of the Assembly, responsible for expert examination of the budget and required to assist the Fifth Committee. At the beginning of each regular session it submits to the General Assembly a detailed report on the budget for the next financial year and on the accounts of the last financial year. Its nine members are appointed by the General Assembly and include at least two financial experts of recognized standing. The members of the Committee, no two of whom can be nationals of the same State, are selected on the basis of broad geographical representation, personal qualifications and experience, and serve for three years corresponding to three financial years. The composition and functions of the Advisory Committee are set out in rules 156-158 of the rules of procedure of the General Assembly.

^{18/} Financial regulations 3.8 and 3.9.

^{19/} For description of the composition and functions of the Advisory Committee, see footnote ^{17/}.

information annexes submitted by the Secretary-General, as well as all relevant reports from the Advisory Committee. 20/

16. The procedure followed by the Fifth Committee in considering the budget falls into three parts. First, after statements by the Secretary-General and by the Chairman of the Advisory Committee, there is a general discussion on the budget as a whole, including related administrative and financial issues. This general discussion is "not limited either in scope or time, it being left to delegations to decide at which stage of the Committee's meetings they wished to make comments of a general nature". 21/ Next, the Fifth Committee makes a detailed examination of the budget estimates in the light of the report of the Advisory Committee and of oral testimony by the Secretary-General and senior Secretariat officials. Specific proposals for reduction or for changes in details in the estimates are voted upon during this stage, which is known as a "first reading". Finally, there is a "second reading", at which the amounts for each section of the budget are reviewed by the Committee in the light of the sum total of its actions during the first reading. 22/

17. The recommendations and comments of the Fifth Committee are embodied in the Rapporteur's report which always concludes with a draft budget resolution for consideration by the General Assembly in plenary meeting. 23/

3. Voting on the budget

18. In the Fifth Committee, a simple majority of the members present and voting is sufficient for approval of the budget or of any of its details. 24/ In a plenary meeting of the General Assembly, a two-thirds majority vote of the members present and voting is required for approval. 25/ The Assembly, however, has followed the recommendations of the Fifth Committee on almost every occasion, though there has sometimes been discussion in the plenary meeting of a particular point in the budget. Occasionally, Member States have made formal objections to certain parts of the budget, and on these grounds have voted against those parts or against the budget as a whole. 26/ The formal approval of the budget by the General Assembly is given by its adoption of the budget resolution. 27/

C. Administration of the budget

1. The nature of the powers vested in the Secretary-General

19. Approval of the budget by the General Assembly vests in the Secretary-General the authority to incur obligations and make payments for the purposes for which the

20/ For example, see the Report of the Fifth Committee on the budget to the ninth session of the General Assembly as contained in A/2886.

21/ G A (VIII), Annexes, a.i. 39, p. 59, A/2622, para. 6. The quotation reflects the established procedures adopted by the Fifth Committee for considering the budget.

22/ For an outline of this, see G A (II), Plen., vol. II, p. 1499, annex 6 b (A/498).

23/ See footnote 20/.

24/ Rule 126 of the rules of procedure of the General Assembly (United Nations publication, Sales No.: 1954.1.17) provides as follows:

"Rule 126. Decisions in the committees of the General Assembly shall be made by a majority of members present and voting."

25/ Article 18 (2) of the Charter.

26/ See paragraphs 31, 37 and 38 below.

27/ The latest example is G A resolution 890 (IX).

appropriations contained in the budget were voted, and up to the amounts so voted. ^{28/}
In the discussion of the agenda item relating to the Financial Regulations of the United Nations in the Fifth Committee of the General Assembly at its fifth session it was pointed out that this authorization did not, in any way, bind the Secretary-General to spend the full amounts so voted, but merely authorized expenditure of the amounts necessary for the proper working of the Organization. ^{29/}

20. The budget resolution of the General Assembly always lists a number of separate appropriations for specified purposes. Thus, the budget resolution adopted at the ninth session listed thirty-four separate appropriations for specified purposes. ^{30/}
For example, section 1 covered the General Assembly and its Committees and Commissions. The information annexes to the budget normally break down the estimates for a section into a number of detailed figures by chapter and article of the budget and provide justification for the expenditures proposed.

21. While the General Assembly has placed no limit on the powers of the Secretary-General to transfer credits between chapters and/or articles within a section of the budget, the Fifth Committee, at its 152nd and 153rd meetings at the third session of the General Assembly, gave particular attention to the powers and the discretion that could be exercised by the Secretary-General in giving effect to the budgetary decisions of the General Assembly. ^{31/}

2. Purposes of transfers within and between sections of the budget

22. Though it has not been expressly stated in the Financial Regulations or elsewhere, the practice that has developed indicates that transfers of credits within a section must be for a purpose within the scope of the section and that transfers of credits from one section to another must be for the purpose of financing a programme which is within the scope of the section to which the transfer is made. ^{32/}

23. Where the transfer is for the purpose of financing a project not previously submitted for the approval of the General Assembly, a special reporting procedure has been developed whereby the Assembly, as the organ ultimately responsible for programmes, is enabled to take cognizance of all cases in which funds have been utilized for projects which had not previously been submitted for its approval. ^{33/}

^{28/} Financial regulation 4.1.

^{29/} G A (V), Annexes, a.i. 41, p. 30, A/1496, para. 8.

^{30/} G A resolution 890 (IX).

^{31/} G A (III), Annexes, p. 564, A/798, para. 4. However, on the basis of a recommendation of the Advisory Committee (G A (III), Suppl. No. 7A (A/598), para. 158), the General Assembly decided that the Secretary-General should refrain, without the prior concurrence of the Advisory Committee, from making transfers of funds within the budget section relating to common staff costs. This condition remained in force for a period of two years until the expenditures for common staff costs had become reasonably stabilized.

^{32/} For the latest example, see table III in the Report of the Secretary-General entitled "Supplementary Estimates for the Financial Year 1954" (A/2792).

^{33/} G A (VI), Annexes, a.i. 40, p. 12, A/2018, para. 5, and G A (VII), Annexes, a.i. 41, p. 12, A/2256, para. 2.

3. Limits placed on transfers between sections of the budget

24. Financial regulation 4.5 provides that "No transfer between appropriation sections may be made without authorization by the General Assembly". Every year, the Secretary-General has been authorized in the budget resolution to transfer credits between sections of the budget, with the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions. ^{34/} The budget resolution has also authorized the Secretary-General in certain cases to administer, as a single unit, credits under different sections of the budget. For example, since the adoption of the budget for 1949 under resolution 252 (III), the General Assembly has provided authority in the budget resolution for the Secretary-General to administer as a unit the appropriations included in different sections of the budget in regard to the meetings of the Permanent Central Opium Board and of the Drug Supervisory Body, and in regard to the joint secretariat of those organs. Similarly, the 1955 credits for the printing of Official Records (section 24), and the printing of other publications (section 25), authorized by General Assembly resolution 890 (IX), were, under the terms of that resolution, made transferable from one section to the other by the Secretary-General on his own authority. ^{35/}

*D. Scope and extent of the powers of the General Assembly to approve expenditures**1. Provisions of the Financial Regulations and of the rules of procedure of the General Assembly and of the Economic and Social Council*

25. The Financial Regulations of the United Nations provide that no council, commission or other competent body "shall take a decision involving expenditure unless it has before it a report from the Secretary-General on the administrative and financial implications of the proposal". ^{36/}

26. The Financial Regulations also provide that "Where, in the opinion of the Secretary-General, the proposed expenditure cannot be made from the existing appropriations, it shall not be incurred until the General Assembly has made the necessary appropriations, unless the Secretary-General certifies that provision can be made under the conditions of the resolution of the General Assembly relating to unforeseen and extraordinary expenses." ^{37/}

^{34/} See, for example, G A resolution 890 (IX), para. 3 (c). Similar provisions were included by the General Assembly in its resolutions relating to budget appropriations for previous years.

^{35/} G A resolution 890 (IX), para. 3 (a) (iii).

^{36/} Financial regulation 13.1.

^{37/} Financial regulation 13.2.

27. As regards the committees of the General Assembly and the Economic and Social Council and its committees, similar provisions are contained in the rules of procedure of the General Assembly 38/ and of the Economic and Social Council respectively. 39/

28. Although the provisional rules of procedure of the Security Council and the rules of procedure of the Trusteeship Council do not contain similar provisions, any resolution involving expenditures which is considered by these organs is subject to the budgetary control set out in the Financial Regulations. 40/

2. Factors considered by the General Assembly in reviewing proposed expenditures

29. In reviewing the annual budget, the General Assembly has considered the administrative as well as the substantive and organizational aspects of the programmes and activities of the Organization.

38/ Rules 154 and 155 of the rules of procedure of the General Assembly provide as follows:

"Rule 154. No resolution involving expenditure shall be recommended by a committee for approval by the General Assembly unless it is accompanied by an estimate of expenditures prepared by the Secretary-General. No resolution in respect of which expenditures are anticipated by the Secretary-General shall be voted by the General Assembly until the Administrative and Budgetary Committee has had an opportunity of stating the effect of the proposal upon the budget estimates of the United Nations.

"Rule 155. The Secretary-General shall keep all committees informed of the detailed estimated cost of all resolutions which have been recommended by the committees for approval by the General Assembly."

39/ Rule 34 of the rules of procedure of the Economic and Social Council (United Nations publication, Sales No.: 1953.I.21), provides as follows:

"Rule 34

"1. ...

"2. Before a proposal which involves expenditure from United Nations funds is approved by the Council or by any of its committees, the Secretary-General shall prepare and circulate to members, as early as possible, a separate estimate of the cost involved in each such proposal. In the case of a proposal involving a new project he shall also circulate to the members an estimate of the time required to complete it. The President of the Council and the chairmen of committees shall draw the attention of members to these estimates and invite discussions on them when the proposal is considered by the Council or by a committee.

"3. The Council shall take into account the estimates referred to in paragraph 2 before adopting any proposal involving expenditure from United Nations funds. If the proposal is adopted, the Council shall indicate, whenever appropriate, the priority or degree of urgency which it attaches to the projects and, as the case may be, which current projects may be deferred, modified or eliminated to ensure that the economic and social work of the United Nations and the specialized agencies will be carried on most effectively.

"4. Whenever the Council wishes to recommend, in cases of exceptional urgency, that work for which no financial provision exists be started before the next regular session of the General Assembly, it shall include a specific indication to that effect to the Secretary-General in the resolution approving the proposal."

40/ See paras. 25 and 26 above.

30. With respect to the administrative review, the Assembly has every year paid particular attention to the number of staff required in each department and to other administrative costs involved in implementing the work programmes. For example, the report of the Fifth Committee on the budget estimates of the financial year 1954 ^{41/} stated: "It was generally considered that, while the Committee should recommend no action which might jeopardize the successful execution of projects, it should on the other hand examine scrupulously all means whereby expenditures for administrative costs might be legitimately reduced and funds freed to the fullest extent possible for the actual operation of programmes." This concern about the level of administrative expenditure has been expressed from time to time in the plenary meetings of the General Assembly. In some instances, representatives of Member States, objecting to certain allocations as being unnecessary or too high, have voted against the budget proposals or have abstained. ^{42/}

31. A few examples will serve to illustrate the considerations of a substantive and organizational character which have been taken into account by the General Assembly in reviewing the budget. For example, the Assembly has been concerned with the question of assessing the relative importance of programmes with a view to giving priority to the more urgent ones. The report of the Fifth Committee on the budget estimates for the financial year 1953 ^{43/} stated: "The keynote of the general discussion... was an emphasis by most of these participating on the continuing upward trend of expenditures and the need for seeking a still greater measure of budgetary stabilization... This objective, it was suggested, could best be accomplished by putting first things first... Many Members... felt that a sounder way of effecting economy and achieving an adequate degree of stability might be to examine proposed activities, one by one, with a view to the restriction of those which lend themselves to curtailment or postponement without harmful consequences."

32. In 1952, the General Assembly resolved that a fixed pattern of conferences should be established for a period of four years in order to allow "for the rational and economic distribution of meetings between Headquarters and Geneva", and recommended to all organs that they adhere to this pattern. ^{44/}

33. In 1947, the General Assembly decided to ask the Secretary-General to approach the Economic and Social Council to see if it could dispense with verbatim recording. ^{45/} In 1948, the Council agreed to do so, the agreement being noted by the General Assembly. ^{46/} In subsequent years, the General Assembly has expressed increasing concern with the cost of producing the official documentation and other publications of the Organization and in this connexion has paid special attention to control and limitation of such documentation. ^{47/}

34. In some cases, in the course of the Fifth Committee's normal administrative review of the estimates for certain activities, representatives of Member States have proposed to delete from the budget certain appropriations requested, on the ground that they opposed that particular activity or programme for substantive reasons. ^{48/}

^{41/} G A (VIII), Annexes, a.i. 39, p. 59, A/2622, para. 92.

^{42/} See, for example, G A (II), Plen., vol. 11, 121st mtg., pp. 1194-1215.

^{43/} G A (VII), Annexes, a.i. 42, p. 73, A/2352, para. 8.

^{44/} G A resolution 694 (VII).

^{45/} G A (II), Plen., vol. II, p. 1499, annex 6 b (A/498), para. 4.

^{46/} G A resolution 243 (III).

^{47/} See G A resolutions 593 (VI) and 789 (VIII).

^{48/} For some recent examples, see G A (IX), 5th Com., 467th mtg., para. 42, 477th mtg., paras. 66, 70.

Whenever a proposal of this type has been made, it has been the practice of the Fifth Committee to proceed to vote as to whether or not that activity should be included in the budget. ^{49/} In a number of instances, representatives of Member States have, in plenary meeting of the General Assembly, voted against the budget estimates as a whole or have abstained, because they opposed the inclusion of appropriations for the financing of activities on substantive grounds. ^{50/}

3. *Power of the General Assembly to approve or disapprove obligations incurred by the Organization*

35. The question of whether the General Assembly, in exercising its budgetary powers, has the right to reject appropriations for obligations incurred by the Organization was raised in connexion with the awards of compensation made by the United Nations Administrative Tribunal in the case of eleven staff members whose appointments had been terminated during 1953. ^{51/}

36. The General Assembly, at its eighth session, considered the inclusion in the supplementary estimates of proposed appropriations for the payment of the awards of compensation made by the Administrative Tribunal. During the discussion of this item in the Fifth Committee, ^{52/} it was stated by representatives opposing payment that the funds for the awards had to be appropriated by the General Assembly as part of the United Nations budget, which had to be considered and approved by the Assembly. In considering the appropriation, the Assembly was bound to review the decisions of the Tribunal and was not entitled to relinquish to any subsidiary organ its power to make appropriations. On the other hand, representatives favouring payment of the awards stated that, while the power of the General Assembly to approve appropriations was not contested, that could hardly serve as a ground for refusing to meet contractual obligations. One representative, ^{53/} who voted for the draft resolution proposing that the International Court of Justice be asked for an advisory opinion, stated that he had done so on the understanding that the Court should also take into consideration whether the Assembly was empowered to deal with the form and substance of any appropriation to be included in the United Nations budget.

37. In its advisory opinion, ^{54/} the Court considered the contention put forward by some Governments that an implied power to impose legal limitations upon the express Charter power of the General Assembly was not legally admissible, and that the establishment of a tribunal competent to make an award of compensation to which the General Assembly was bound to give effect would contravene Article 17 (1) conferring upon the Assembly the power to consider and approve the budget of the Organization.

38. The Court rejected this contention, and stated that the function of approving the budget did not mean that the General Assembly had an absolute power to approve or disapprove the expenditures proposed to it; the General Assembly had no alternative but to honour obligations already incurred by the Organization, and these obligations comprised the awards of compensation made by the Administrative Tribunal in favour of staff members.

^{49/} For some recent examples, see G A (IX), 5th Com., 477th mtg., paras. 68, 71.

^{50/} For the latest example, see G A (IX), Plen., 515th mtg., paras. 111-122.

^{51/} See also in this Repertory under Article 22.

^{52/} For texts of relevant statements, see G A (VIII), 5th Com., 420th-423rd mtgs. and 425th-427th mtgs.; *ibid.*, Plen., 471st mtg.

^{53/} G A (VIII), 5th Com., 426th mtg., para. 91.

^{54/} Effect of awards of compensation made by the United Nations Administrative Tribunal, I C J, Reports 1954, p. 47.

4. Budget ceiling

39. Article 17 (1) of the Charter places no limit upon the amount of the budget. However, the question of a budget ceiling has been raised in the Fifth Committee from time to time by Member States in the course of discussions on the budget estimates.

40. At the fifth session of the General Assembly, a representative submitted a draft resolution which aimed at stabilizing the estimates of expenditures of the programme activities of the Economic and Social Council. The effect of the draft resolution was to request "the Economic and Social Council, in considering the programme of activities for each of the years 1952 and 1953, to take the appropriations approved in the regular budget of the United Nations for 1951 as indicating the level of expenditure to be incurred upon the regular programme of the United Nations in economic and social fields;" 55/

41. The basis for submitting the draft resolution was that "firstly...it would be very good if Governments were to know for some years in advance what their commitments in relation to the regular activities of the United Nations were likely to be. Secondly... worthwhile programmes of the United Nations were likely to be jeopardized if too much was attempted." 56/

42. Several delegations supported the principle which underlay the draft resolution, but the majority of those taking part in the debate expressed inability to support it for practical and procedural reasons. Finally, the sponsor of the draft resolution agreed to withdraw it, but reserved his delegation's right to reintroduce it at the appropriate place and time. 57/

43. The draft in question had been submitted following the discussion of the idea, urged by a number of delegations, that the regular budget of the Organization should be established in the future at a figure not exceeding thirty-five million dollars net. The draft resolution was expressive of the concern with which the majority of the Member States participating in the discussion viewed the increasing cost of international administration, as reflected in the budgets of the United Nations and of its affiliated agencies over recent years. As stated in the report of the Fifth Committee,

"This concern ... could best be allayed and excessive inflation of costs arrested, by the establishment of standards of administrative efficiency and economy comparable to those enforced in the most highly developed national administrations. If costs continued to increase, there would be a grave danger that essential activities might be severely limited by lagging contributions. Throughout the discussions, therefore, the need was constantly emphasized for ensuring that available resources are used to the best possible advantage and not dissipated among activities of limited importance and remote value...

"Other delegations, however, while equally desirous of ensuring a maximum degree of administrative economy, believed that this should be consistent with the provision of means adequate at all times for the efficient discharge of the Organization's essential functions. Stabilization of the budget within an arbitrarily determined ceiling was not, therefore, considered to be a practicable or necessarily desirable objective." 58/

55/ G A (V), Annexes, a.i. 39, p. 55, A/C.5/L.96.

56/ Ibid., p. 61, A/1734 and Add.1, para. 11.

57/ Ibid., paras. 13 and 15.

58/ G A (V), Annexes, a.i. 39, p. 61, A/1734 and Add.1, paras. 7 and 9.

44. No specific proposal to place a ceiling on the budget as a whole was put forward at the fifth session of the General Assembly, nor was such a proposal subsequently placed before the Assembly. The question was referred to again at some length during the discussions of the budget estimates by the Assembly at its eighth session, when similar reasons were advanced for and against a budget ceiling. 59/

E. Extent of control by the General Assembly over budgetary expenditure

1. The Board of Auditors

45. The General Assembly, in addition to approving the budget, has established an audit system to ensure that the funds voted by the budget are spent in accordance with the provisions of the budget and of the Financial Regulations. The General Assembly has delegated to the Board of Auditors, established at its first session, 60/ the primary responsibility for carrying out this function.

46. The Board of Auditors is composed of the Auditors-General (or corresponding officers) of three Member States. Each member is appointed by the General Assembly for a three-year term. 61/ By resolution 347 (IV), the Assembly resolved that there should be a joint panel of auditors from which the United Nations and its specialized agencies should select their external auditors.

2. Functions of the Board of Auditors and principles governing the audit procedure of the United Nations

47. The functions of the Board of Auditors and the principles governing the audit procedures of the United Nations as finally established have been set out in an appendix to the Financial Regulations. 62/

48. The Board of Auditors performs such audit of the accounts of the United Nations, including all trust and special accounts, as it deems necessary in order to certify that the financial statements are in accord with the books and records of the Organization, that the financial transactions reflected in the statements are in accordance with the rules and regulations, the budgetary provisions and other applicable directives, and that the securities on deposit and on hand are verified by certificate received directly from the Organization's depositaries or by actual count.

49. The Board is also required to make a report to the General Assembly on the accounts which it certifies and is directed to mention in the report the specific points listed in paragraph 7 of the appendix to the Financial Regulations. These points include matters affecting the completeness or accuracy of the accounts, wasteful or improper expenditure of United Nations money, expenditure likely to commit the United Nations to further outlay on a large scale and expenditure not in accordance with the intention of the Assembly, after making allowances for duly authorized transfers within the budget.

59/ G A (VIII), Annexes, a.i. 39, p. 59, A/2622, paras. 13 and 14.

60/ G A resolution 74 (I), para. (h).

61/ G A resolution 74 (I), paras. (a) and (c).

62/ G A resolution 456 (V), Annex.

*3. Procedure for review of accounts and audit reports
by the General Assembly*

50. The certified annual accounts of the United Nations are normally accompanied by a financial report of the Secretary-General. The accounts and report of the Secretary-General together with the report of the Board of Auditors, are transmitted by the Board to the General Assembly, which refers them to the Advisory Committee on Administrative and Budgetary Questions. The comments of the Advisory Committee, and the accounts and the reports referred to above are considered by the Fifth Committee, and then by the General Assembly in plenary meeting. Normally, the Assembly adopts a resolution by which it accepts the financial report and accounts of the United Nations and the certificate of the Board, and takes note of the observations of the Advisory Committee. 63/

F. Extra-budgetary funds

1. General statement

51. As indicated in section A of this Summary, the normal continuing programmes of the United Nations are financed from the United Nations budget. There are, however, a number of programmes approved by the General Assembly which have been financed in whole or in part by voluntary contributions from Member States or from other sources. These voluntary contributions are not included in the budget of the United Nations, and have been designated as extra-budgetary funds. In some cases these voluntary contributions have been used to extend programmes initiated under the regular United Nations budget.

2. The principal extra-budgetary programmes

52. The principal extra-budgetary programmes financed wholly from voluntary funds are the following:

- (a) United Nations Children's Fund; 64/
- (b) United Nations Relief and Works Agency for Palestine Refugees in the Near East, 65/ and its predecessor, the United Nations Relief for Palestine Refugees; 66/
- (c) United Nations Korean Reconstruction Agency. 67/

53. The principal extra-budgetary programmes financed mainly, but not wholly, from voluntary funds are:

- (a) Expanded Programme of Technical Assistance for under-developed countries; 68/
- (b) Office of the United Nations High Commissioner for Refugees. 69/

63/ For example, see G A resolution 862 (IX).

64/ Originally established by G A resolution 57 (I) as "United Nations International Children's Emergency Fund". The name was changed to "United Nations Children's Fund" by G A resolution 802 (VIII).

65/ G A resolution 302 (IV).

66/ G A resolution 212 (III).

67/ G A resolution 410 (V).

68/ E S C resolution 222 (IX) and G A resolution 304 (IV).

69/ G A resolutions 428 (V) and 832 (IX).

3. Raising funds for extra-budgetary purposes

54. At its fifth session, the General Assembly, by resolution 410 B (V), requested its President to appoint a negotiating committee of Member States to consult with Member and non-member States regarding voluntary contributions to the programme for the rehabilitation and reconstruction of Korea. At its sixth session, the Assembly, recognizing the necessity of establishing and maintaining procedures for obtaining funds to finance extra-budgetary programmes, requested its President to appoint a Negotiating Committee for Extra-Budgetary Funds of not more than ten members for the purposes of consulting with Member and non-member States as to the amounts which Governments might be willing to contribute on a voluntary basis towards each of the programmes referred to the negotiating committee by the General Assembly. ^{70/} The General Assembly also laid down certain principles for the Negotiating Committee to follow in carrying out its task. ^{71/} Since the sixth session, the General Assembly has annually appointed a Negotiating Committee. ^{72/}

4. Control of extra-budgetary funds

55. Apart from administrative expenditures of the United Nations technical assistance programme ^{73/} and the Office of the High Commissioner for Refugees, ^{74/} the annual budgets for programmes financed from extra-budgetary funds are not submitted to the General Assembly for approval. However, financial arrangements have been made for each programme, providing for an audit of the accounts of expenditure by the Board of Auditors, which reports thereon to the General Assembly. The audit reports are referred by the General Assembly to the Advisory Committee on Administrative and Budgetary Questions. Furthermore, with respect to the operational programmes, the Assembly has provided for the creation of governmental committees having the duty of supervising to a greater or lesser degree the allocation of available funds. Thus, in the case of the United Nations Children's Fund, there is an Executive Board which lays down for the Executive Director of the Fund "policies, including the determination of programmes and allocation of funds, ... in accordance with such principles as may be laid down by the Economic and Social Council and its Social Commission;" ^{75/}

56. At its sixth session, the General Assembly, by resolution 594 (VI), resolved that the administrative part of the technical assistance programme executed by the United Nations should be subject to the same scrutiny by the Advisory Committee as that applied to other expenses proposed under the regular United Nations budget. The Assembly also requested the Advisory Committee, in reviewing the accounts of all the special operational programmes authorized by the General Assembly and financed from extra-budgetary funds, to pay special attention to the administrative practices and expenses of their programmes, and to submit comments thereon as part of its reports to the Assembly. ^{76/} Since the adoption of General Assembly resolution 594 (VI), the

^{70/} G A resolution 571 B (VI).

^{71/} G A resolution 693 (VII).

^{72/} G A resolutions 693 (VII), 759 (VIII) and 861 (IX).

^{73/} See para. 56 below.

^{74/} Para. 21 of the Statute of the Office of the High Commissioner for Refugees, adopted by G A resolution 428 (V), provides: "The administration of the Office of the High Commissioner shall be subject to the Financial Regulations of the United Nations and to the financial rules promulgated thereunder by the Secretary-General."

^{75/} G A resolution 57 (I).

^{76/} G A resolution 594 (VI).

United Nations budget estimates have set forth full details of the administrative part of the technical assistance budget, even though the costs concerned fall mainly on extra-budgetary funds. 77/

57. At its ninth session, the General Assembly, 78/ having noted the concern expressed by the Negotiating Committee for Extra-Budgetary Funds regarding the effect of the establishment, for activities and programmes supported by voluntary contributions, of financial targets unlikely to be realized in terms of actual receipts of contributions, requested the organs of the United Nations concerned with the approval of activities and programmes to be financed by voluntary contributions, to satisfy themselves that the budgetary levels of those programmes are established at amounts consistent with the probabilities of collection of contributions for such activities and programmes.

77/ For the latest example, see G A (IX), Suppl. No. 5 (A/2647).

78/ G A resolution 861 (IX).

ARTICLE 17 (2)

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TEXT OF ARTICLE 17 (2)

The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

INTRODUCTORY NOTE

1. At the first part of its first session, the General Assembly appointed a Committee on Contributions to advise it on the apportionment of the expenses of the Organization. The General Assembly indicated, in the original terms of reference of the Committee, the principles by which the Committee should be guided. At subsequent sessions of the General Assembly, further directives have been given for the guidance of the Committee.
2. This study analyses the basis on which the expenses of the Organization have been apportioned. The first four sections deal with the fundamental principles that have been followed and the questions that have arisen in applying these principles; they outline the steps taken to deal with these questions. The fifth section deals with contributions by non-member States. The sixth section shows how the machinery established for apportioning the expenses of the Organization has operated in respect of the Working Capital Fund, while the seventh and eighth sections touch briefly on certain procedural problems.

I. GENERAL SURVEY

3. The Financial Regulations of the United Nations adopted by the General Assembly during its fifth session provide 1/ that the expenses of the United Nations shall be financed by contributions from Member States according to the scale of assessments determined periodically by the General Assembly.
4. At the first part of its first session, the General Assembly had appointed a Committee on Contributions of ten members selected on a basis of broad geographical representation, personal qualifications and experience, to advise it on the apportionment of the expenses of the Organization. 2/
5. Under its terms of reference, 3/ the Committee was instructed to apportion the expenses of the Organization "broadly according to capacity to pay". The terms of reference also set out the various factors to be taken into account in measuring such capacity. While maintaining the basic principle of apportionment according to capacity

1/ G A resolution 456 (V), annex, financial regulations 5.1 and 5.2.

2/ G A resolution 16 (I); rules 159-161 of the rules of procedure of the General Assembly, United Nations Publications, Sales No.: 1954.1.17.

3/ G A resolution 14 A (I).

to pay, the General Assembly at its third, 4/ sixth, 5/ seventh 6/ and ninth 7/ sessions gave further directives for the establishment of the scale. 8/

6. The Committee on Contributions has made annual reports 9/ to the General Assembly on the apportionment of the expenses of the United Nations. These reports have been considered by the Fifth Committee of the General Assembly at its regular session each year, and the Fifth Committee in turn has reported thereon to the General Assembly. 10/ The draft resolutions which the Fifth Committee has recommended for adoption by the General Assembly have been attached to its annual report. That annual report and the draft resolutions attached thereto have in turn been considered and voted upon by the General Assembly in plenary session.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Basis for determining capacity to pay

1. Terms of reference

7. The original terms of reference 11/ of the Committee on Contributions stated that it would be difficult to measure capacity to pay merely by statistical means and that it would be impossible to arrive at any definite formula. It was indicated, however, that "comparative estimates of national income would appear *prima facie* to be the fairest guide". In order to prevent anomalies in the assessments resulting from the use of comparative estimates of national income, the Committee was instructed to take into account the following three main factors: (a) Comparative income per head of population; (b) Temporary dislocation of national economies arising out of the Second World War; and (c) Ability of Members to secure foreign currency.

2. Statistical information

8. For the purpose of establishing the relative capacity to pay of Member States, the Committee, as indicated in its terms of reference, has used national income estimates based on statistical information provided by the Member States themselves and submitted to the Committee by the Secretary-General. Since the General Assembly's call 12/ to Members to provide the required statistics, there has been, over the years, a progressive improvement in the statistical information available. Nevertheless, for

4/ G A resolution 238 A (III).

5/ G A resolution 582 (VI).

6/ G A resolution 665 (VII).

7/ G A resolution 876 A (IX).

8/ G A (IX), Suppl. No. 10 (A/2716), p. 7.

9/ Reports submitted by the Committee on Contributions: A/80; G A (II), 5th Com., p. 16, annex 6 (A/377); G A (III/1), Plen., annexes, p. 94, A/628; G A (IV), 5th Com., annex, vol. I, p. 123; G A (V), Suppl. No. 13 (A/1330); G A (VI), Suppl. No. 10 (A/1859); G A (VII), Suppl. No. 10 (A/2161); G A (VIII), Suppl. No. 10 (A/2461); G A (IX), Suppl. No. 10 (A/2716).

10/ Reports of the Fifth Committee on the scale of assessments: G A (I/2), Plen., p. 1559, annex 75 (A/274); A/462; G A (III/1), Plen., annexes, p. 307, A/702; G A (IV), Plen., annex, p. 163, A/1025; G A (V), annexes, a.i. 40, p. 2, A/1669 and Corr.1; G A (VI), annexes, a.i. 44, p. 1, A/2019; G A (VII), annexes, a.i. 46, p. 1, A/2286; G A (VIII), annexes, a.i. 42, p. 42 (A/2577 and Corr.1); A/2822.

11/ G A resolution 14 A (I). For text of the present terms of reference, see G A (IX), Suppl. No. 10 (A/2716), annex.

12/ G A resolution 238 A (III).

a number of Member States, the Statistical Office of the United Nations has still had to prepare estimates based on available national income data for earlier years, supplementary data provided by Governments, and other economic information. In using the statistical material provided, the Committee has taken account of the varying reliability and accuracy of the figures supplied. 13/

9. For comparative purposes, the national income estimates expressed in national currencies have been converted into a common unit, namely, the United States dollar. In recent years, the Committee has in most cases used official exchange rates for such conversion, but in a few special cases where modifications in exchange rates were recent or where multiple exchange rates prevailed, the method of conversion made allowance for the trend of prices, wages and other factors in the countries concerned. Where multiple exchange rates have been in operation, the Statistical Office of the United Nations has also consulted with the Governments concerned as to the rates most suitable for converting the national income figures into dollars. 14/

3 Use of comparative estimates of national income

10. The Committee at first based its computations of relative capacity to pay on national incomes for single years. However, at its 1952 session held in August, the Committee decided to base these computations on average national incomes for a series of years, rather than on estimates for single years, so as to reduce the effect of short-run fluctuations in economic conditions and of movements in exchange rates. At that session, it decided to use, for the first time, a two-year average of national income estimates for each country. At its 1953 session, the Committee decided, where practicable, to base its calculations on an average of national income estimates for three years. 15/

4 Factors to be taken into account to avoid anomalous assessments

a. COMPARATIVE INCOME PER HEAD OF POPULATION

11. The method followed in making allowance for differences in comparative per capita income was, briefly, to grant all countries with a per capita income below \$1,000 per annum a reduction of their basis of assessments by amounts which, for countries with the very lowest per capita incomes, approached a maximum of 50 per cent. 16/

b. TEMPORARY DISLOCATION OF NATIONAL ECONOMIES ARISING OUT OF THE SECOND WORLD WAR

12. When the Committee for the first time submitted a scale of assessments in 1946 it had as a basis for its work pre-war national income estimates. 17/ At that time

13/ G A (IX), Suppl. No. 10 (A/2716), para. 5.

14/ Ibid., para. 7.

15/ Ibid., para. 9.

16/ G A (IX), Suppl. No. 10 (A/2716), para. 10. Under resolution 582 (VI), the General Assembly directed that special attention be given to countries with low per capita income. Consequently, the Committee at its 1952 meeting increased the maximum reduction from 40 to 50 per cent. Under resolutions 663 (VII) and 876 (IX), the General Assembly reaffirmed the directive to give additional recognition to countries with low per capita income and instructed the Committee to continue to do so in the future.

17/ A/80, para. 17.

it made judgements as to the extent to which the capacity to pay of countries which had suffered from the war had been reduced, and, in making allowance for that factor, graded the countries which had suffered from enemy action according to the relative dislocation of their national economies. With the use of post-war national income estimates and the improvement in statistical data, the Committee has reached the conclusion that current national income estimates made sufficient allowance for any remaining dislocation of national economies arising out of the Second World War. 18/

C. ABILITY OF MEMBERS TO SECURE FOREIGN CURRENCY

13. As a result of its consideration of the factor of the ability of Members to secure foreign currency the Committee found that it would not be practicable to make a systematic quantitative allowance for it, but took this factor into account in arriving at certain individual assessments. 19/ Furthermore, in order to lessen the difficulty of payment of contributions in United States dollars, as prescribed by financial regulation 5.5, the General Assembly each year empowered the Secretary-General to accept, at his discretion and after consultation with the Chairman of the Committee on Contributions, a portion of the contributions of Member States in currencies other than United States dollars. 20/

B. Upper and lower limits on contributions

1. Over-all maximum ceiling

14. At its third session, the General Assembly recognized that "in normal times no one Member State should contribute more than one-third of the ordinary expenses of the United Nations for any one year". 21/ At the same session, the General Assembly stated that "when existing maladjustments in the present scale have been removed and a more permanent scale is proposed, as world economic conditions improve, the rate of contribution which shall be the ceiling for the highest assessment shall be fixed by the General Assembly". At its seventh session, the General Assembly decided that "from 1 January 1954 the assessment of the largest contributor shall not exceed one-third of total assessments against Members". 22/

2. Per capita ceiling

15. At its third session, the General Assembly recognized that "in normal times the per capita contribution of any Member should not exceed the per capita contribution of the Member which bears the highest assessment". 23/ Although full effect has at no time been given to the per capita ceiling principle, it was taken into account in establishing the scale of assessments in subsequent years. 24/ At its seventh session, the General Assembly instructed the Committee to "defer further action on the per capita ceiling until new Members are admitted or substantial improvement in the economic

18/ G A (IX), Suppl. No. 10 (A/2716), para. 11.

19/ Ibid., para. 12.

20/ G A resolution 876 B (IX), para. 3, which is similar to the relevant resolutions adopted in previous years. The text of financial regulation 5.5 is as follows: "Annual contributions and advances to the Working Capital Fund of the United Nations shall be assessed and paid in United States dollars."

21/ G A resolution 238 A (III).

22/ G A resolution 665 (VII).

23/ G A resolution 238 A (III).

24/ G A (V), Suppl. No. 13 (A/1330), para. 16, and G A (VII), Suppl. No. 10 (A/2161), para. 17.

capacity of existing Members permits the adjustments to be gradually absorbed in the scale" of assessments. 25/ At its ninth session, the General Assembly reaffirmed this directive and instructed the Committee to apply this decision to future scales of assessments "so that the percentage contributions of those Members subject to the per capita principle will be frozen against any increase over the level approved for the 1955 budget until they reach per capita parity with the highest contributor and that downward adjustments will occur when the conditions cited in resolution 665 (VII) of 5 December 1952 have been fulfilled or changes in relative national incomes warrant lower assessments". 26/

3. Minimum assessment

16. At the second part of the first session of the General Assembly, the question of a minimum or lower limit for the contribution which any State should pay was raised in the Fifth Committee, whose Sub-Committee on Contributions recommended a minimum assessment of 0.04 per cent. This minimum assessment which was approved by the General Assembly in adopting the 1946 scale of assessments 27/ has been maintained in all subsequent scales.

4. Minimum contribution for new Members for the year of admission

17. At the second part of its first session, the General Assembly decided that new Member States should "be required to contribute to the annual budget of the year in which they were first admitted at least $33\frac{1}{3}$ per cent of their percentage of assessment determined for the following year, applied to the budget for the year of their admission". 28/

C. Revision of scales of assessments

18. Rule 161 of the rules of procedure of the General Assembly provides that "The scale of assessments, when once fixed by the General Assembly, shall not be subject to a general revision for at least three years, unless it is clear that there have been substantial changes in relative capacities to pay." However, notwithstanding the provisions of this rule, the General Assembly has, in practice, made the scale of assessments subject to a general review on an annual basis. 29/

19. In taking this action, the General Assembly recognized that post-war world economic and financial conditions were not sufficiently stable for implementation of rule 161, and that the statistics available were not sufficiently reliable to warrant the immediate establishment of a permanent scale of assessments as envisaged by the Committee's terms of reference. With the gradual improvement in the available statistics, the Committee decided that progress could be made toward removing existing maladjustments in the scale. In recommending changes, the Committee was of the opinion that it should move cautiously and gradually in order to be satisfied fully that the changes proposed were justified by the available evidence. 30/ Consequently, it began

25/ G A resolution 665 (VII).

26/ G A resolution 876 A (IX).

27/ G A resolution 69 (I).

28/ G A resolution 69 (I).

29/ G A resolution 876 B (IX), para. 2. This resolution is similar to the resolutions relating to the scale of assessments adopted in previous years.

30/ G A (V), Suppl. No. 13 (A/1330), para. 11.

a systematic revision of the scale designed to remove the existing maladjustments and to make possible a more permanent scale within a few years. ^{31/} In its report to the General Assembly at its ninth session, ^{32/} the Committee stated that the progress made in the gradual removal of maladjustments was indicated by the steady decline in the over-all magnitude of the annual changes in the scale. Inequities still remained, however, which, the Committee considered, it would be inadvisable to remove in one step. Consequently, it recommended that the proposed scale of assessments should again apply for one year only. This recommendation was approved by the General Assembly, but during the discussions of the Committee's report in the Fifth Committee the hope was expressed that it would be possible for the Committee to remove the remaining divergencies and to establish a more permanent scale in 1955. ^{33/}

D. Relative merits of the percentage system
and the unit system of assessment

20. The scale of assessments of Member States for the apportionment of the expenses of the Organization has always been calculated on a percentage basis. The question of changing from the percentage system of assessment to the unit system was a subject of prolonged study. In a report to the General Assembly at its ninth session, the Committee on Contributions, after discussing the respective advantages and disadvantages of each method in some detail, concluded that the percentage system should be continued. ^{34/} These conclusions were supported by the Fifth Committee. ^{35/}

E. Extent to which expenses have been shared by non-member States

21. The expenses of the Organization have been borne not only by Member States but, to a limited degree, by a number of non-member States which participate in various United Nations activities, and which have been called upon to contribute toward the expenses of the Organization resulting from them. Thus, non-member States contribute to meeting the expenses of: ^{36/} (a) The International Court of Justice ^{37/} (b) The United Nations in respect to its obligations resulting from international control of narcotic drugs ^{38/} (c) The Regional Economic Commissions. ^{39/}

22. The percentage rates at which these non-member States were called upon to contribute were established by the Committee on Contributions according to the same principles as governed the rates of assessment for Member States. These rates were subject to consultation with the respective Governments and to approval by the General Assembly. ^{40/} All such contributions were taken into account as miscellaneous income. ^{41/}

^{31/} G A (VI), Suppl. No. 10 (A/1859); G A (VII), Suppl. No. 10 (A/2161) and G A (VIII), Suppl. No. 10 (A/2461).

^{32/} G A (IX), Suppl. No. 10 (A/2716), para. 17.

^{33/} A/2822, para. 14.

^{34/} G A (IX), Suppl. No. 10 (A/2716), para. 36.

^{35/} A/2822, para. 25.

^{36/} G A resolution 493 (V) provides for assessment of non-member States that become parties to the Convention on Declaration of Death of Missing Persons, but so far no non-member States have become parties to the Convention.

^{37/} G A resolutions 91 (I), 363 (IV), 805 (VIII) and 806 (VIII).

^{38/} G A resolution 455 (V).

^{39/} E S C resolution 517 (XVII).

^{40/} G A (IX), Suppl. No. 10 (A/2716), para. 22.

^{41/} Financial regulation 5.9.

F. The Working Capital Fund

23. A Working Capital Fund was established by the General Assembly at the first part of its first session ^{42/} and has been maintained since. ^{43/} The Working Capital Fund has been used mainly to finance the expenses of the Organization pending the receipt of contributions from Member States. ^{44/} It was required that all advances from the Working Capital Fund for the financing of expenditure be reimbursed. ^{45/} The amount at which the Fund was to be maintained each year has varied according to the discretion of the General Assembly. ^{46/} For the year 1955, the amount has been fixed at \$21,500,000. ^{47/} The source of moneys of the Working Capital Fund has been advances from Member States made in accordance with the scale of assessments as determined by the General Assembly for the apportionment of the expenses of the United Nations. ^{48/}

G. Adjustment of accounts with Member States and non-member States

24. There has been no established procedure for the adjustment of differences between the United Nations and the Governments of Member States and non-member States with respect to the United Nations contributions account. Cases involving such differences, which have remained unsettled for a period of years, have been brought to the attention of the General Assembly by the Board of Auditors. ^{49/}

H. Membership of the Committee on Contributions

1. Appointment of members

25. The Committee on Contributions is an expert committee of ten members, ^{50/} selected on the basis of broad geographical representation, personal qualifications and experience. No two members may be nationals of the same State. Each serves for a three-year term and is eligible for re-appointment. ^{51/}

2. Substitute members

26. No provision was made in the rules of procedure of the General Assembly or elsewhere for a substitute to act for a member of the Committee on Contributions in his absence.

27. During the sixth session of General Assembly, the question was raised in the Fifth Committee whether, in a case of absence, it was possible for an expert elected in a personal capacity to one of the subsidiary bodies of the General Assembly to be

^{42/} G A resolution 14 H (I).

^{43/} The General Assembly has annually adopted a resolution relating to the functioning of the Working Capital Fund.

^{44/} G A resolution 892 (IX), para. 4 (a). This resolution is similar to the resolutions relating to the Working Capital Fund adopted in previous years.

^{45/} Financial regulations 6.3 and 6.4.

^{46/} Financial regulation 6.2.

^{47/} G A resolution 892 (IX), para. 1.

^{48/} Financial regulation 6.2. Annual provision has also been made to this effect in the resolution relating to the Working Capital Fund. For the provision relating to 1955, see G A resolution 892 (IX), para. 2.

^{49/} G A (VIII), Suppl. No. 6 (A/2392), para. 24; G A (IX), Suppl. No. 6 (A/2649), para. 21.

^{50/} Rule 159 of the rules of procedure of the General Assembly.

^{51/} *Ibid.*, rule 160.

replaced by a substitute. An opinion by the Legal Department of the United Nations Secretariat, which was read to the Fifth Committee by its Chairman, concluded that members of expert bodies would require the authorization of the General Assembly to appoint substitutes. 52/

28. The Chairman of the Committee on Contributions then explained 53/ that the Committee had followed the practice of accepting substitute members since its inception, that in each case when this was done the fact was reported in the Committee's report 54/ and that there had been no criticism of this procedure in the General Assembly.

29. No further action has been taken by the General Assembly in this connexion. In its reports to the General Assembly at its seventh and eighth sessions, the Committee indicated that at each session a substitute had served in the place of an appointed member. 55/

52/ G A (VI), 5th Com., 319th mtg., pp. 208-211.

53/ G A (VI), 5th Com., 341st mtg., para. 52.

54/ A/80; G A (II), 5th Com., p. 16, annex 6 (A/377); G A (III/1), Plen., annexes, p. 94, A/628; G A (IV), 5th Com., annex, vol. I, p. 123, A/954; G A (V), Suppl. No. 13 (A/1330); G A (VI), Suppl. No. 10 (A/1859).

55/ G A (VII), Suppl. No. 10 (A/2161); G A (VIII), Suppl. No. 10 (A/2461): The further statement was added that the substitute "remained in constant consultation" with the appointed member.

ARTICLE 17 (3)

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TEXT OF ARTICLE 17 (3)

The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

INTRODUCTORY NOTE

1. Article 17 (3) confers on the General Assembly two functions in regard to the specialized agencies which are brought into relationship with the United Nations under Article 57 of the Charter: (1) that of considering and approving any financial and budgetary arrangements with specialized agencies and (2) that of examining the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

2. This study analyses the nature and scope of the financial and budgetary arrangements that have been developed between the United Nations and the specialized agencies. The first section of the Analytical Summary of Practice deals with the financial and budgetary arrangements that were included in the relationship agreements with the various specialized agencies. The second and third sections describe how these arrangements were applied to the examination by the Assembly of the administrative budgets of the agencies. The fourth section analyses the various recommendations which were made by the General Assembly pursuant to the arrangements agreed to between the United Nations and the specialized agencies and as a result of the annual examination by the Assembly of the budgets of the agencies. The last section describes the role of the Advisory Committee on Administrative and Budgetary Questions and of the Economic and Social Council (including the Administrative Committee on Co-ordination) in the development of administrative and financial co-ordination between the United Nations and the specialized agencies.

I. GENERAL SURVEY

3. The relationship agreements which the United Nations has concluded with the specialized agencies in accordance with the terms of Article 63 of the Charter contain appropriate provisions to facilitate the implementation of Article 17 (3). The provisions in this regard contained in the agreements ^{1/} with the International Labour

^{1/} For the final texts of these agreements in English and French, see United Nations publication, Sales No.: 1951.X.1. The texts of the agreements between the United Nations and ILO, FAO and UNESCO in English, French and Spanish are to be found in documents A/72, A/78 and A/77 respectively. These three agreements were subsequently approved by General Assembly resolution 50 (I). The text of the agreement between the United Nations and WHO is reproduced in English, French and Spanish, in the annex to Economic and Social Council resolution 403 B (XIII). This text was approved by General Assembly resolution 531 (VI).

Organisation (ILO), the Food and Agriculture Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Civil Aviation Organization (ICAO), the World Health Organization (WHO) and the World Meteorological Organization (WMO) follow more or less the same lines while the provisions in the agreements with the Universal Postal Union (UPU), and the International Telecommunication Union (ITU) are less detailed. The provisions in the agreements with the International Monetary Fund and the International Bank for Reconstruction and Development took into account the special nature of these two agencies.

4. The General Assembly, by resolution 14 A (I) of 13 February 1946, included in the terms of reference of the Advisory Committee on Administrative and Budgetary Questions the responsibility of examining on behalf of the General Assembly the administrative budgets of specialized agencies and proposals for financial arrangements with such agencies (operative paragraph 2 (c)).

5. In compliance with this responsibility, the Advisory Committee has every year examined, and reported on, the administrative budgets of the agencies as well as questions of financial budgetary co-ordination with them. 2/

6. The General Assembly has also been assisted by the Economic and Social Council in discharging its responsibilities under Article 17 (3). 3/

7. From time to time, the General Assembly, on the basis of reports furnished to it by the Advisory Committee and the Economic and Social Council, has made suggestions or recommendations to the specialized agencies on financial, budgetary and administrative matters. 4/ These have included comments and recommendations on common financial and administrative arrangements, joint audit procedures, a common form of budget, the desirability of a consolidated budget for the United Nations and the specialized agencies, a common approach towards the financing of budgets, a joint staff pension scheme, development of priorities, co-ordination of financial procedures relating to extra-budgetary programmes, and other similar matters.

2/ The reports of the Advisory Committee are: G A resolution 165 (II), annex A; G A (III/1), Plen., Annexes, pp. 224-238, A/675; G A (IV), Joint 2nd and 3rd Com., Annex, p. 14, A/1005; G A (V), Annexes, a.i. 12 and 29, p. 6, A/1441; G A (VI), Annexes, a.i. 28, p. 2, A/1956; G A (VI), Annexes, a.i. 28, p. 4, A/1971; G A (VII), Annexes, a.i. 26, p. 9, A/2287; G A (VIII), Annexes, a.i. 45, p. 1, A/2582; A/2835. See also paras. 79 et seqq. below.

3/ See paragraphs 83-91 below.

4/ G A resolutions 81 (I); 125 (II); 210 (III); 311 (IV); 411 (V); 412 (V); 413 (V); 533 (VI); 534 (VI); 672 (VII); 779 (VIII) and 884 (IX).

II. ANALYTICAL SUMMARY OF PRACTICE

A. Nature and scope of the financial and budgetary arrangements with the specialized agencies^{5/}

1. *Budgetary arrangements contained in specialized agencies agreements (other than agreements with the International Bank for Reconstruction and Development and the International Monetary Fund)*

a. AGREEMENTS^{6/} WITH ILO, FAO, UNESCO, ICAO, WHO, WMO

8. In the agreements with ILO, FAO, UNESCO, ICAO, WHO and WMO, the respective article on the budgetary and financial arrangements opened with a clause recognizing the desirability of establishing close budgetary and financial relationships in order that the administrative operations of the United Nations and of the specialized agencies might be carried on in the most efficient and economical manner possible and that the maximum measure of co-ordination and uniformity might be secured.

9. The next clause provided that the fullest possible co-operation should be established in order to achieve these ends and, in particular, that the United Nations and the agency concerned should consult together concerning the desirability of making appropriate arrangements for including the budget of that agency within a general budget of the United Nations, any such future arrangements to be defined in a supplementary agreement. The words "the desirability of making" or other similar phraseology appeared in the agreements with ILO, ^{7/} ICAO, ^{8/} WHO ^{9/} and WMO ^{10/}; they did not, however, appear in the agreements with UNESCO ^{11/} and FAO. ^{12/} Thus, while consultation with the former agencies might include the question of whether or not a consolidated budget is desirable, consultation with the latter was to be confined to the ways and means of arriving at such a consolidated budget.

10. The articles then enumerated several specific actions to be taken by the United Nations and the agency concerned. In those cases where the desirability of a general budget was open to discussion, these points were listed as clauses of a permanent nature; in the other cases the same points, with minor variations, were listed as arrangements which should govern financial relationships pending the conclusion of the agreement in connexion with the question of a general budget.

11. The points in question were the following: (a) in the preparation of its budget each agency was to consult with the United Nations; (b) further it was to transmit its proposed budget to the United Nations annually at the same time as it was transmitted to its own members; (c) the General Assembly was to examine this budget or proposed budget and "may make recommendations to the agency" concerning any item or items

^{5/} For Charter provisions on the relationship between the United Nations and the specialized agencies, and their relations with the Economic and Social Council, see in this Repertory under Articles 57 and 63.

^{6/} See footnote ^{1/} above.

^{7/} Article XIV, para. 2.

^{8/} Article XV, para. 2.

^{9/} Article XV, para. 2.

^{10/} Article XII, para. 2, subject to the reservation: "if it appears expedient to both Organizations".

^{11/} Article XVI, para. 2.

^{12/} Article XIV, para. 2.

contained therein" (agreements with ILO 13/, UNESCO 14/ and WHO 15/) or "may make such recommendations as it may consider necessary" (agreements with FAO 16/, ICAO 17/ and WMO 18/). All these agreements provided that representatives of the agency concerned were to be entitled to participate without vote in meetings of the General Assembly and its committees when that agency's budget and related matters were under consideration.

12. The above-mentioned agreements provided that the United Nations might undertake the collection of contributions from those members of the agency that were also Members of the United Nations, under the terms of an agreement to be concluded subsequently. Finally these agreements provided for studies by the United Nations of other financial and fiscal questions of interest to the agencies, with a view to the establishment of common services and to ensure uniformity; and each agency agreed to conform as far as may be practicable to standard practices and forms recommended by the United Nations.

b. AGREEMENTS WITH UPU^{13/} AND ITU^{20/}

13. The agreements with UPU and ITU stipulated that the budgets of these organizations should be transmitted to the United Nations and that the General Assembly might make recommendations thereon to the agency concerned.

2. *Summary of arrangements with the International Bank for Reconstruction and Development and the International Monetary Fund concerning the budgets*

14. In contrast with the arrangements entered into with the other specialized agencies, the budgetary arrangements with the International Bank for Reconstruction and Development and the International Monetary Fund, as set out in their respective agreements 21/ with the United Nations, merely provided that these agencies would furnish to the United Nations copies of their annual reports and their quarterly financial statements. Further, these agreements provided that the United Nations would in interpreting Article 17 (3) of the Charter, take into consideration that these two agencies did not rely for their annual budgets upon contributions from their members. They also provided that the appropriate authorities of these agencies would enjoy full autonomy in deciding the form and content of their annual budgets.

B. The phrase "administrative budgets" of specialized agencies

1. *Transmission of the budgets of specialized agencies to the United Nations*

15. Although Article 17 (3) of the Charter refers to the "administrative budgets of ... specialized agencies", the text of the budgetary and financial arrangements contained in the various specialized agencies agreements 22/ provided for the

13/ Article XIV, para. 4.

14/ Article XVI, para. 3 b.

15/ Article XV, para. 3 b.

16/ Article XIV, para. 3 b.

17/ Article XV, para. 4.

18/ Article XII, para. 3 b.

19/ Article X.

20/ Article XI, para. 1.

21/ Article X, para. 3.

22/ See paras. 1 and 13 above.

transmittal of the entire budgets of the specialized agencies concerned to the United Nations. The General Assembly in turn has examined the budgets in their entirety, 23/ rather than in part.

2. Consultation in the preparation of budgets

16. Since the conclusion of the agreements between the United Nations and the specialized agencies, there has been consultation between the Secretariats of the United Nations and of the specialized agencies in the preparation of the budgets. The Advisory Committee has emphasized in this connexion that the implementation of the clauses in the agreements calling for consultation at a working level was one of the most effective methods to achieve greater standardization of administrative and financial practices and to obtain savings through the development of comparative standards of efficiency. 24/

3. Co-ordination of the form of budget

17. By resolution 311 (IV), the General Assembly requested the Secretary-General of the United Nations and the heads of the specialized agencies to intensify their efforts to achieve a common form of budget, giving particular attention to common definitions of administrative and operational expenses, to the quality of budget justification and to methods for showing estimates of reimbursement for services rendered.

18. In pursuance of this resolution, the Secretary-General of the United Nations and the executive heads of the specialized agencies in the Administrative Committee on Co-ordination (ACC) have endeavoured to seek a common form of budget. 25/ Early in the consideration of this question, the members of ACC felt that the most constructive approach would be to concentrate initially upon one or two basic elements of budget presentation. 26/ Thus, during 1950, agreement 27/ was reached on model budget justifications, on methods for showing estimates for reimbursements for services rendered by other international organizations, and on standard budget summaries. Since then a common panel of objects of expenditure has been developed and used for purposes of comparative presentation. 28/

19. The consideration of a standard form of budget was deferred indefinitely by ACC. The chief reasons for doing so were that (a) Member States of the various organizations had at one time or another shown a preference for widely differing emphasis on budget presentation; (b) there appeared to be no dissatisfaction on the part of the respective finance committees and conferences with the budget structure currently in use and (c) in a number of instances, the individual budget structure had developed upon the specific suggestion or request of finance committees or governing bodies. 29/

23/ For example, see A/2855; A/2861 and G A resolution 884 (IX).

24/ G A (III), Annexes, a.i. 25, A/675, para. 42.

25/ See paras. 87-90 below.

26/ G A (VI), Annexes, a.i. 28, p. 11, A/C.2 & 3/100-A/C.5/457, paras. 16-21.

27/ G A (V), Annexes, a.i. 12 and 29, p. 2, A/1552, para. 8.

28/ Information annex II to budget estimates for 1952, 1953, 1954 and 1955.

29/ This paragraph summarizes discussions in ACC and its subsidiary bodies; no legislative action has been taken.

20. The Advisory Committee noted in a report 30/ to the General Assembly at its seventh session that it should be possible, in spite of the factors mentioned in the foregoing paragraph, to place before legislative bodies an over-all pattern of presentation to which might be added, as appropriate, any special material which the legislative bodies of a particular agency might request. The Advisory Committee again emphasized this point in its twenty-sixth report 31/ to the General Assembly at its eighth session.

21. Consideration has also been given by ACC to a common definition of the terms Administrative and operational costs. For general budgetary purposes, ACC has in principle agreed 32/ to the definition of the term "administrative expenses" developed by the World Health Organization 33/.

22. In this connexion, a proposal submitted by Brazil to the Economic and Social Council at its eleventh session was referred to ACC. 34/ Under the terms of that proposal, the budgets of the specialized agencies would be divided into (a) a regular budget, covering normal and continuing expenses to be considered as administrative costs, and (b) an operational budget, covering projects considered to be outside the normal work load. The latter would include such extraordinary expenses as those involved in projects requiring action rather than study. Some representatives on ACC considered that, normally, research work constituted an initial stage of activity which, when brought to its conclusion, was followed by a separate action stage, as defined in the Brazilian proposal. The common view adopted by the ACC was, however, that it would most frequently not be practicable to base the form of budget of an organization upon the principle of separating administrative and research activities from all other activities. 35/

23. It may be noted that, under the terms of General Assembly resolution 411 (V), the agencies which participate in the Expanded Programme of Technical Assistance submit annually to their conferences or governing bodies, either as part of the budget document or in supplementary form, information on expected expenditures for activities financed outside their normal budget appropriations. 36/ A summary of such information is presented annually to the General Assembly in Information Annex II to the budget estimates submitted by the Secretary-General. 37/

C. Nature and scope of examination of administrative budgets

24. All the specialized agencies, except the Bank and the Fund, 38/ transmit their annual budgets to the Secretary-General of the United Nations before 1 July in order that the Secretary-General may incorporate these budgets or budgetary estimates as

30/ G A (VII), Annexes, a.i. 26, p. 13, A/2287, paras. 42 and 43; ibid., p. 18, A/2324, para. 4.

31/ G A (VIII), Annexes, a.i. 45, A/2582, para. 59.

32/ G A (VI), Annexes, a.i. 28, p. 11, A/C.2 & 3/100-A/C.5/457, para. 19.

33/ Ibid., annex 1, p. 15.

34/ E S C resolution 324 (XI), annex.

35/ G A (VI), Annexes, a.i. 28, p. 11, A/C.2 & 3/100-A/C.5/457, paras. 19-21.

36/ G A (VI), Annexes, a.i. 28, p. 11, A/C.2 & 3/100-A/C.5/457, para. 14.

37/ For example, see G A (IX), Suppl. No. 5 A (A/2647/Add.1), pp. 36 and 37.

38/ See paragraph 14 above for details of arrangements which exclude the Bank and the Fund from obligation to transmit their budgets to the United Nations.

information annexes in his annual budget estimates for transmittal to the General Assembly. This practice follows a request to that effect made by the General Assembly at its second session. ^{39/}

25. As an example of the manner in which the administrative budgets of the specialized agencies are examined by the General Assembly, attention is drawn to the relevant proceedings at the eighth session of the General Assembly. The Advisory Committee's review of the 1954 budgets of the specialized agencies was contained in its twenty-sixth report to the Assembly at its eighth session. ^{40/} This report was considered by the Fifth Committee of the Assembly. In its turn, the report thereon of the Fifth Committee ^{41/} to the Assembly recommended adoption of a draft resolution by which the Assembly would take note of the Advisory Committee's report and would invite the attention of the specialized agencies to the recommendations and suggestions made in the Advisory Committee's report. This draft resolution was adopted by the General Assembly and became resolution 779 (VIII).

26. The examination of the agencies' budgets by the Advisory Committee and, consequently, by the General Assembly, is confined to a broad review of the major characteristics and includes a consideration of general financial policies. No attempt is made towards a detailed or exhaustive analysis of these budgets; such an analysis is carried out by the competent body of the agency concerned. ^{42/}

D. Financial and budgetary arrangements — analysis of recommendations made by the General Assembly to the specialized agencies

27. Both Article 17 (3) of the Charter and the agreements between the United Nations and the specialized agencies envisaged close consultation between the General Assembly and the specialized agencies with a view to the General Assembly making recommendations to these agencies on the ways and means of co-ordinating their financial policies with those of the United Nations. The main specific measures that were considered or adopted in order to achieve this goal are dealt with in the present section. These measures included the following:

- (1) Adoption of common financial and administrative regulations;
- (2) Establishment of a joint audit procedure;
- (3) Development of a common form of budget;
- (4) Consideration of a consolidated budget;
- (5) Establishment of a common approach towards the financing of the budgets of the specialized agencies;
- (6) Establishment of a Joint Staff Pension Fund and of a common system of social security for staff;
- (7) Development of priorities with a view to the concentration of efforts and resources;
- (8) Co-ordination of budget procedures in relation to the technical assistance and other extra-budgetary programmes involving voluntary contributions;
- (9) Other recommendations.

^{39/} G A resolution 125 (II).

^{40/} G A (VIII), Annexes, a.i. 45, p. 1, A/2582.

^{41/} Ibid., p. 8, A/2619.

^{42/} G A (VIII), Annexes, a.i. 45, p. 8, A/2619, para. 3.

1. Adoption of common financial and administrative regulations

a. COMMON FINANCIAL REGULATIONS

28. At its fifth session the General Assembly, by resolution 456 (V), adopted the Financial Regulations of the United Nations and expressed the hope that these regulations would likewise be adopted by the specialized agencies with only such alterations as were required to meet their constitutional provisions and organizational structure. Accordingly, ILO, FAO, UNESCO, ICAO, WHO and WMO adopted financial regulations generally in line with those approved in the above-mentioned resolution. ^{43/} Because of the special arrangements which they have had with the Swiss Government for many years, ITU and UPU did not find it practicable or advantageous to modify these arrangements to any considerable extent. ^{44/}

b. COMMON STAFF REGULATIONS AND SALARY SYSTEM

29. At its fifth session the General Assembly, by resolution 411 (V), requested the specialized agencies to consider the adoption of staff regulations modelled, so far as their constitutional arrangements permitted, on those adopted by the General Assembly. The permanent staff regulations of the United Nations were adopted by the General Assembly under resolution 590 (VI).

30. Staff regulations in all major respects in line with those of the United Nations were adopted by most of the specialized agencies. Further, the United Nations salary, allowance and leave system adopted by the General Assembly under resolution 470 (V) was also adopted (with minor modifications necessary because of special factors) by ILO, FAO, UNESCO, ICAO, WHO and WMO. ^{45/}

c. COMMON SERVICES

31. In the interest of economy, considerable effort has been devoted to achieving, to the maximum extent possible, a system of common services for use by the United Nations and the specialized agencies.

32. Under the provisions of paragraphs 5 and 6 of resolution 411 (V) adopted at the fifth session, the General Assembly requested the Secretary-General, in consultation with the heads of the specialized agencies, "to pay particular attention, in 1951, to the further development of satisfactory arrangements for the provision of common services, particularly in respect of regional and branch offices of the United Nations and specialized agencies, with a view to achieving greater efficiency and economy;" and "after consultation with the heads of the specialized agencies and with the Advisory Committee on Administrative and Budgetary Questions, to report to the next regular session of the General Assembly in respect of progress made ... in efficiencies and economies to be achieved through further development of common services,".

33. The Secretary-General in reporting ^{46/} to the General Assembly at its sixth session in accordance with resolution 411 (V), stressed that success in establishing common services depended to a great extent on the achievement of a basic pattern of

^{43/} A/2835, para. 11.

^{44/} G A (VI), Annexes, a.i. 28, p. 4, A/1971, paras. 65-68.

^{45/} The information in this paragraph is based on papers submitted by the Secretary-General to the Advisory Committee which have not been reproduced; see also G A (VI), Annexes, a.i. 45, p. 1, A/1855, para. 4.

^{46/} G A (VI), Annexes, a.i. 28, p. 16, A/C.2 & 3/103-A/C.5/460.

United Nations conference activity. Accordingly, the General Assembly, by resolution 534 (VI), requested the Secretary-General, after consultation with the executive heads of the specialized agencies and the principal organs of the United Nations concerned, to prepare such an annual conference pattern. The Secretary-General presented a report ^{47/} on the programme of conferences at Headquarters and at Geneva to the General Assembly at its seventh session. By resolution 694 (VII) the General Assembly decided that "a regular pattern of conferences should be established for a period of four years commencing on 1 January 1954," and outlined such a pattern.

34. At the same session of the Assembly, the Secretary-General also made a separate report on the progress of co-ordination of services in Geneva. ^{48/} The Advisory Committee's comments on this subject were contained in that Committee's twenty-fifth report ^{49/} to the General Assembly at its seventh session.

35. In its twenty-sixth report to the General Assembly at its eighth session, ^{50/} the Advisory Committee drew attention to the fact that, under resolution 210 (III), the General Assembly had requested the specialized agencies to consider whether holding full-scale annual conferences was necessary. The report also indicated the prevailing position, which showed that the intervals between regular sessions of the legislative bodies in each case varied from one year to five years.

2. Establishment of a joint audit procedure

36. By resolution 347 (IV), adopted at the fourth session, the Assembly approved principles regarding a joint panel of auditors for the United Nations and the specialized agencies. ^{51/} Further, by resolution 311 A (IV), the Assembly urged the specialized agencies to adhere to the joint system of external audit approved by a majority of the agencies through the Administrative Committee on Co-ordination. ^{52/}

37. In the report of the Joint Second, Third and Fifth Committee on the subject of co-ordination between the United Nations and the specialized agencies to the General Assembly at its fifth session, the Joint Committee noted that progress had been made in the implementation of resolution 311 A (IV) adopted by the General Assembly at its fourth session, and that the Joint Panel of Auditors had been established. ^{53/}

38. As of 1954, all the agencies, with the exception of ITU and UPU (which use Swiss Government auditors) and the Bank and the Fund have adhered to the joint system of audit. ^{54/}

39. The increase in the activities of the United Nations and of the specialized agencies and the related increase in their financial responsibilities made a review of audit procedures desirable. Consequently, the General Assembly, by resolution 672 B (VII), requested the Secretary-General and the executive heads of the specialized agencies to undertake such a review in consultation with the Joint

^{47/} G A (VII), Annexes, a.i. 26, p. 20, A/2243.

^{48/} Ibid., p. 1, A/C.5/504.

^{49/} Ibid., p. 9, A/2287, paras. 59 et seqq.

^{50/} G A (VIII), Annexes, a.i. 45, p. 1, A/2582, para. 63.

^{51/} G A resolution 347 (IV); annex B.

^{52/} G A resolution 311 A (IV).

^{53/} G A (V), Annexes, a.i. 12 and 29, p. 39, A/1547, paras. 16-26; for details of action taken by the agencies, see *ibid.*, p. 2, A/1352, paras. 14-16.

^{54/} E S C (XVI), a.i. 30, p. 11, E/2446, para. 68; also A/2479, para. 2.

Panel of Auditors. By the same resolution, the Assembly also requested Member Governments to submit their views in this regard to the Secretary-General.

40. The Administrative Committee on Co-ordination considered this question in May 1953 and reached the conclusion that there did not appear at the time to be any need for a general change in the type of audit arrangements now in existence. 55/ The Secretary-General consequently proposed that consideration of possible changes in existing audit arrangements be postponed until the ninth session of the General Assembly. 56/ The Advisory Committee concurred 57/ in this proposal, as did the General Assembly when it adopted resolution 768 (VIII). At the ninth session, the General Assembly, by resolution 871 (IX), again postponed consideration of the question until the tenth session in order that both the Secretary-General and the Advisory Committee might study the matter further during 1955. 58/

3. *Development of a common form of budget*

41. A number of measures have been taken by the General Assembly towards the development of a common form of budget. These measures have been discussed in detail in paragraphs 17-23 above.

4. *Consideration of a consolidated budget*

42. At the sixth session of the General Assembly, the Joint Second and Third Committee and the Fifth Committee, meeting jointly, considered a draft resolution submitted by Norway which would request the Secretary-General to study and report on the constitutional and practical problems in connexion with the adoption of a consolidated budget for the United Nations and the specialized agencies. 59/

43. The committees reached the conclusion that "while study of the subject might be in some ways desirable, the time was not yet ripe for action in the matter. They considered that, while continuing their current efforts towards improved budgetary co-ordination, the Secretary-General and the Advisory Committee should, at an appropriate time, give attention to the question and place it before a future session of the General Assembly. 60/

44. The Advisory Committee accordingly considered this question during 1952. The question was the subject of discussions, both with representatives of the Secretary-General of the United Nations and with the executive heads of several specialized agencies or their representatives, in connexion with the Committee's review of agency budgets for 1953. The question was further considered during October 1952 at a meeting of the Advisory Committee and the Administrative Committee on Co-ordination. 61/

45. In the light of these discussions, the Advisory Committee reached the conclusion, in which the Secretary-General of the United Nations concurred, that it would be premature to place the question before the General Assembly at its seventh session. The Advisory Committee proposed to keep the question under continuous review and, at

55/ A/2479, para. 5.

56/ Ibid.

57/ G A (VIII), Annexes, a.i. 43, p. 1, A/2546, para. 2.

58/ A/2776, para. 2.

59/ G A (VI), Annexes, a.i. 28, A/2 & 3/L.48-A/C.5/L.139.

60/ Ibid., p. 1, A/2107, para. 45.

61/ G A (VII), Annexes, a.i. 26, p. 9, A/2287, para. 46.

an appropriate time, to make recommendations to the Assembly, after consulting with the Secretary-General. 62/

46. In a report 63/ submitted to the Economic and Social Council in 1948 by the Administrative Committee on Co-ordination it was suggested that there was no advantage in continuing to explore the question of a consolidated budget, and that the "collective efforts and experience of the United Nations and the specialized agencies might more profitably be directed to development of alternative methods and techniques of co-ordination". At its meeting with the Advisory Committee in October 1952, ACC indicated that it still subscribed to the above views and, further, that the progress made since 1948 in the matter of budgetary and administrative co-ordination between the United Nations and the specialized agencies had been such as to justify the suggestion put forward that year to the effect that attempts at the consolidation of budgets should be abandoned in favour of the development of alternative methods of co-ordination. 64/

47. The Advisory Committee therefore recorded its opinion that, "irrespective of the precise date when the question is again brought before the Assembly, the long-term view of Member States on the advantages of comprehensive budgeting will be largely influenced, and indeed may be determined, by the position taken by the executive heads of the United Nations and the specialized agencies in respect of common services and the co-ordination of services". 65/

5. Establishment of a common approach towards the financing of the budgets of the specialized agencies

48. The establishment of a common approach towards the financing of the budgets of the specialized agencies has raised two problems: that of how to deal with arrears in contributions, and that of how to finance the budgets of the specialized agencies pending the receipt of contributions from Member States.

49. On the problem of arrears in contributions, the General Assembly, by resolution 511 C (IV), recommended that each specialized agency keep its annual expenditure under its regular budget within the amount of funds it could reasonably expect to receive in respect of that year and that the programme of expenditure be reviewed periodically so that, if necessary, it might be adjusted to keep it, as far as possible, within the limits of the anticipated annual receipts.

50. The Advisory Committee, when reporting to the General Assembly at its fifth session, indicated that default or delay in the payment of contributions assessed against States members of the agencies might result in a severe drain on the Working Capital Funds of those agencies, and might hamper the execution of programmes approved in the budgets. 66/ Furthermore, it stated that several agencies could never expect to receive the full amount of the assessments on their members, since their scale of contributions included States which had not joined, or which had given notice of withdrawal from the organization, as well as States which, for other reasons, were in arrears or had defaulted on their contributions. 67/

62/ G A (VII), Annexes, a.i. 26, p. 9, A/2287, para. 47.

63/ E/846.

64/ Ibid., para. 48.

65/ Ibid., para. 49.

66/ G A (V), Annexes, a.i. 12 and 29, p. 6, A/1441, para. 12.

67/ Ibid., para. 13.

51. In the same report, the Advisory Committee also stated that some agencies, notably WHO and UNESCO, had found it necessary to adopt plans of expenditure substantially below the approved budgets in order to meet the problem of arrears. The Advisory Committee had doubts concerning this technique of financial control, since in such cases the budget estimates merely became a theoretical target. 68/

52. In the course of the discussion of this question in the Fifth Committee at the fifth session of the General Assembly, one representative suggested that a more realistic method of assessing Member States and of collecting their contributions would remedy budgetary difficulties of the agencies. It was somewhat unrealistic to assess countries which had formally declared that they were not members of an agency. The need for strict measures against defaulters 69/ was also emphasized.

53. The question of a common approach by all specialized agencies to the problem of arrears has been kept under review in the Administrative Committee on Co-ordination as well as in the secretariats of the individual agencies. 70/

54. As regards the financing of the budgets pending receipt of contributions, most specialized agencies (as well as the United Nations) have drawn the necessary advances from working capital funds. The size of these funds varies from agency to agency, both in terms of the absolute amount and in the proportion of the respective annual budget which they represent. 71/

55. The Advisory Committee has repeatedly urged the specialized agencies which do not finance their budgets by the working capital fund system, such as ITU and UPU to change over to this system. 72/

6. Establishment of a Joint Staff Pension Fund and a common system of social security for staff

56. The General Assembly, by resolution 24 (III), adopted regulations for the United Nations Joint Staff Pension Fund. Membership in the joint fund is open to all specialized agencies and the following agencies have joined the fund: ILO, FAO, UNESCO, ICAO, WHO and WMO. 73/

57. The question of also bringing ITU within the scheme is at present under study by the appropriate organs of that agency. This follows a recommendation by the Advisory Committee that ITU should consider the question in view of the fact that such participation in the Joint Fund would prove more economical than the continuance of the separate ITU pension fund. 74/

58. A similar common approach has also been attempted in regard to social security provisions for staff members. Of the social security plans that have been in effect in the various agencies, those of the United Nations, ILO and UNESCO have incorporated

68/ G A (V), Annexes, a.i. 12 and 29, p. 6, A/1441, para. 13.

69/ G A (V), Annexes, a.i. 12 and 29, p. 39, A/1547, para. 20.

70/ G A (VI), Annexes, a.i. 28, p. 4, A/1971, para. 20; G A (VII), Annexes, a.i. 26, p. 9, A/2287, paras. 37-40; and G A (VIII), Annexes, a.i. 45, p. 1, A/2582, para. 51.

71/ G A (VIII), Annexes, a.i. 45, p. 1, A/2582, para. 52.

72/ For example, see G A (VII), Annexes, a.i. 26, p. 9, A/2287, para. 41.

73/ G A (VIII), Suppl. No. 8 (A/2421), para. 2.

74/ G A (V), Annexes, a.i. 12 and 29, p. 6, A/1441, para. 61; G A (VI), Annexes, a.i. 28, p. 4, A/1971, para. 67; G A (VIII), Annexes, a.i. 45, p. 1, A/2582, para. 39.

the main features of a common plan which was discussed at the inter-agency meetings. Discussions are in progress at present and it is expected that the other large specialized agencies will adopt similar provisions. A proposal for joint financing of a common fund for the purpose was considered, but was abandoned as it was found impractical financially as well as administratively. 75/

7. Development of priorities with a view to the concentration of efforts and resources

59. The General Assembly, under resolution 413 (V), recognized that the successful execution of the economic and social work of the United Nations and of the specialized agencies might be jeopardized by undertaking so many projects as to exceed the available technical, administrative and financial resources and that the resources placed at the disposal of the United Nations and of the specialized agencies should be applied where they were most needed. The Assembly, therefore, requested each specialized agency to review its 1952 programme during 1951, using the criteria set forth in the report 76/ of the Co-ordination Committee as approved by the Economic and Social Council.

60. The Assembly, under the same resolution, requested the Economic and Social Council to review in 1951, with the assistance of the Advisory Committee, the 1952 programmes of the United Nations and of the specialized agencies, using the criteria which had been approved by the Council. 77/

61. A report on action taken by the Economic and Social Council and by the specialized agencies in implementation of this request was submitted to the General Assembly at its sixth session in the report of the Economic and Social Council for 1951. 78/ The General Assembly, by resolution 533 (VI), noted the action taken.

62. The practice of annual review by the Economic and Social Council of the economic and social programmes of the United Nations and of the specialized agencies has been continued and the Council has every year included references to such review in its report to the General Assembly. 79/

63. Action taken by the specialized agencies towards concentration of effort and resources has been under review also by the Advisory Committee. In its twenty-fifth report to the General Assembly at its seventh session, the Advisory Committee drew attention to the problem of adopting an over-all system of priorities providing for a relative order of importance, not only within, but also as between, fields of competence of the several agencies. 80/

75/ This paragraph summarizes the discussion in ACC and its subsidiary bodies; no legislative action has been taken in this regard.

76/ E/1810 and Corr.1. For the steps taken by the General Assembly and the Economic and Social Council leading up to the adoption of Assembly resolution 413 (V), see in this Repertory under Article 63.

77/ Ibid.

78/ G A (VI), Suppl. No. 3 (A/1884), pp. 132-134.

79/ G A (VII), Suppl. No. 3 (A/2172); G A (VIII), Suppl. No. 3 (A/2430); G A (IX), Suppl. No. 3 (A/2686).

80/ G A (VII), Annexes, a.i. 26, p. 9, A/2287, paras. 50-55.

64. The Advisory Committee considered the question again during 1953 and, in its twenty-sixth report 81/ to the General Assembly at its eighth session, suggested that consideration be given to a comprehensive financial appraisal of the activities of the United Nations and of the specialized agencies. The Committee stressed the usefulness of an inter-governmental review of relative priorities at a central point. In this connexion the Committee recalled that the Economic and Social Council had, when approving the criteria for priorities, pointed out that "their effectiveness will largely depend upon the extent to which governments, through their delegates, are prepared to apply them to proposals submitted at the various international conferences". 82/

65. The General Assembly, by resolution 779 (VIII), took note of the Advisory Committee's above-mentioned report 83/ and invited the attention of the specialized agencies to the recommendations and suggestions made therein.

66. In its thirty-first report 84/ to the General Assembly at its ninth session, the Advisory Committee re-emphasized the need for a central review of activities which it had suggested earlier. (See paragraph 64 above.) The Advisory Committee also suggested that specialized agencies periodically undertake a fundamental review of activities in the light of their basic aims and objectives and also in the light of the needs of changing circumstances. At the ninth session, the General Assembly, under resolution 884 (IX), took note of the Advisory Committee's report and invited the attention of the specialized agencies to the recommendations and suggestions made in that report.

8. Co-ordination of budget procedures in relation to technical assistance and other extra-budgetary programmes involving voluntary contributions

67. The General Assembly recognized the need for co-ordination of budgetary and financial procedures of extra-budgetary programmes when, by resolution 411 (V), it requested specialized agencies participating in the technical assistance programme to provide information concerning the estimates for expenditure of technical assistance funds, as well as of other extra-budgetary funds, in their regular budget documents. It also requested the agencies to agree to the transmittal to the General Assembly, for examination and approval, of the audit reports relating to expenditure of technical assistance funds allocated from the Special Account after approval of the appropriate audit reports by the general conferences of the specialized agencies.

68. The adoption of resolution 411 (V) was recommended to the Assembly by the Advisory Committee with a view to facilitating a comprehensive appraisal of the whole of the activities of an agency without reference to a number of separate documents. 85/

69. In accordance with General Assembly resolution 411 (V), the secretariats of specialized agencies which have programmes financed from extra-budgetary sources have annually supplied their legislative bodies with information concerning the funds under

81/ G A (VIII), Annexes, a.i. 45, p. 1, A/2582.

82/ E S C resolution 324 (XI), Annex.

83/ G A (VIII), Annexes, a.i. 45, p. 1, A/2582.

84/ A/2835, paras. 5 and 6.

85/ G A (V), Annexes, a.i. 12 and 29, p. 6, A/1441, paras. 8 and 9.

their administration. 86/ A summary consolidated table, giving a brief description of such extra-budgetary funds, is included every year in information annex II to the United Nations budget estimates. 87/

70. In its seventh report 88/ to the General Assembly at its sixth session, the Advisory Committee stated that, although the recommendations 89/ of the Committee had been substantially complied with, the problem of presentation still existed in most of the agencies. The Committee suggested that consideration be given to the inclusion, wherever appropriate, in the regular budget estimates and especially in summary tables, of references to parallel activities which the organization expected to undertake under extra-budgetary arrangements. 90/

71. In the same report the Advisory Committee also pointed out that in regard to the technical assistance programme the secretariats of the respective agencies had the final responsibility - either directly or indirectly, through the Technical Assistance Board (TAB) which is composed of the executive heads of the United Nations and of the specialized agencies - for approving projects and, where necessary, for establishing an order of priorities. The Committee considered this procedure to be contrary to national practices and suggested that consideration be given to the question of modifying it with a view to providing for a legislative examination of projects and priorities. 91/

72. In the report of the Joint Second and Third Committee and the Fifth Committee, meeting jointly, to the General Assembly at its sixth session, on the co-ordination between the United Nations and the specialized agencies, reference was made to a draft resolution submitted by a representative relating to administrative control of operational programmes financed by voluntary contributions. After discussion of this draft resolution, it was agreed to include the substance of its operative paragraphs in the Committee's report. These paragraphs provided that the administrative parts of operational programmes financed out of voluntary funds should be subject to co-ordination, and requested the Economic and Social Council to propose appropriate measures for effecting such co-ordination. 92/

73. The need for an active role by legislative bodies in the formulation of technical assistance programmes and in the approval of projects was again emphasized by the Advisory Committee in its twenty-fifth report to the General Assembly, at its seventh session; the report which pointed out that only thus could the necessary measure of co-ordination between activities under the regular budget and those under the technical assistance programmes be assured. The Advisory Committee further suggested that the administrative costs of technical assistance programmes should be subject to detailed examination by the competent committees of the agencies in the same way as regular budget costs. 93/

86/ G A (VI), Annexes, a.i. 28, p. 4, A/1971, para. 12.

87/ For example, see G A (IX), Suppl. No. 5 A (A/2647/Add.1), pp. 36 and 37.

88/ G A (VI), Annexes, a.i. 28, p. 4, A/1971, para. 14.

89/ G A (V), Annexes, a.i. 12 and 29, p. 6, A/1441, paras. 8 and 9; see paras. 67 and 68 above.

90/ G A (VI), Annexes, a.i. 28, p. 4, A/1971, para. 14.

91/ Ibid., para. 15.

92/ G A (VI), Annexes, a.i. 28, p. 31, A/2107, para. 38.

93/ G A (VII), Annexes, a.i. 26, p. 9, A/2287, paras. 30-33.

74. Under resolution 672 (VII), the General Assembly invited the attention of the specialized agencies to these views and suggestions of the Advisory Committee.

75. At its eighth session, the General Assembly, by resolution 722 (VIII), requested the Advisory Committee "to review as soon as possible the administrative procedures of the Technical Assistance Board and those of the participating organizations as well as their administrative expenditures so far as those are financed from the Special Account;"

76. Accordingly, the Advisory Committee in 1954 reviewed the administrative procedures relating to the Expanded Programme of Technical Assistance and submitted a report 94/ on the subject to the General Assembly at its ninth session.

77. Under resolution 831 (IX), the General Assembly referred the suggestions and recommendations contained in this report to the Economic and Social Council, requesting it to furnish to the General Assembly at its tenth session a report on the progress made in the consideration of the questions raised, together with the comments of the Advisory Committee thereon. At the same time, as a result of reviewing the Advisory Committee's report mentioned above and also that Committee's report 95/ on the 1955 budgets of the specialized agencies, the Fifth Committee, at the ninth session of the Assembly adopted a proposal 96/ authorizing the Advisory Committee to respond favourably to any invitation from a specialized agency to continue at the headquarters of such agency the study of the questions that had been raised.

9. Other recommendations

78. The General Assembly has, over the years, also encouraged the specialized agencies to utilize, to the maximum extent possible, soft currencies for their expenditures 97/ and also to avail themselves of the services of the United Nations Investments Committee for advice on the nature and extent of investment of their funds. 98/ Furthermore the Assembly has further encouraged the agencies to utilize the services of the United Nations Committee on Contributions with a view to the development of uniform principles of assessment and the utilization of the same data for such assessment. 99/

E. Role of the Advisory Committee on Administrative and Budgetary Questions and of the Economic and Social Council

79. The General Assembly has delegated to the Advisory Committee the initial responsibility for examining any financial and budgetary arrangements within the scope of the specialized agency agreements concluded pursuant to Article 63 of the Charter. 100/ Accordingly, the Advisory Committee has examined "on behalf of the General Assembly the administrative budgets of specialized agencies and proposals for financial arrangements with such agencies;" 101/

94/ A/2661.

95/ A/2835.

96/ A/2861, para. 10.

97/ G A resolution 311 A (IV).

98/ G A resolution 412 (V).

99/ G A resolution 311 B (IV).

100/ G A resolution 14 A (I).

101/ Ibid.

80. In accordance with these provisions, the Advisory Committee has made a report each year to the General Assembly on the administrative budgets of the specialized agencies. The Advisory Committee has also examined all proposals for financial arrangements and administrative co-ordination generally and reported thereon to the General Assembly. 102/

81. The role of the Advisory Committee was subsequently expanded by General Assembly resolutions 411 (V) and 413 (V). Under the first of these resolutions the Assembly requested the specialized agencies to include in their regular budget documents information concerning their extra-budgetary funds and to agree to the transmittal to the Assembly of the audit reports relating to expenditure of Expanded Programme of Technical Assistance funds.

82. As a consequence of the inclusion of information on extra-budgetary funds in the regular budget documents of the specialized agencies, the Advisory Committee's examination of the agency budgets was extended, in practice, to cover a general review of the administrative and financial policies relating to extra-budgetary programmes of the agencies.

83. Under resolution 413 (V), the General Assembly requested the Economic and Social Council to seek, in reviewing the 1952 programmes of the United Nations and the specialized agencies, the assistance of the Advisory Committee on the administrative and financial aspects of the programmes. 103/

84. In compliance with this resolution, the Advisory Committee was invited 104/ to provide the Economic and Social Council, at its summer session each year, with any general observations on administrative and budgetary co-ordination between the United Nations and the specialized agencies which, in its opinion, would assist the Council in its task. The Advisory Committee, accordingly, submitted comments and observations on the financial implications of proposed United Nations and agency programmes to the Economic and Social Council. 105/

85. The reports of the Advisory Committee on the administrative budgets of the specialized agencies and on any other administrative and financial matters concerning the agencies have normally been considered by the Fifth Committee of the General Assembly. The report of the Fifth Committee on the agency budgets has, as a rule, been accompanied by a draft resolution which has been submitted for adoption to the General Assembly. Occasionally, the reports of the Advisory Committee on administrative and financial co-ordination between the United Nations and the specialized agencies have been considered by a joint meeting of the Second, Third and Fifth Committees of the Assembly. Since the seventh session, however, such reports have been considered by the Fifth Committee alone. 106/

102/ See footnote 2.

103/ See also G.A. resolution 533 (VI).

104/ E.S.C. resolution 402 B (XIII).

105/ E.S.C. resolution 451 (XIV), appendix; E.S.C. (XVI), Annexes, a.i. 30, E/2483; A/2835.

106/ The relevant reports of the Main Committees of the General Assembly are: G.A. (II), Plen., vol. II, p. 1584, annex 22 b (A/494); G.A. (III/1), Plen., Annexes, p. 224, A/714; G.A. (IV), Plen., Annex, p. 11, A/1121; G.A. (V), Annexes, a.i. 12 and 29, p. 39, A/1547; G.A. (VI), Annexes, a.i. 28, p. 31, A/1607; G.A. (VII), Annexes, a.i. 26, p. 18, A/2324; G.A. (VIII), Annexes, a.i. 45, p. 8, A/2619; A/2861.

86. In its examination of the administrative budgets of the specialized agencies and related financial matters, the General Assembly has been assisted also by the Economic and Social Council. 107/

87. Under the terms of Article 63, the Economic and Social Council is charged with the over-all responsibility of co-ordinating the activities of the specialized agencies. In pursuance of the terms of resolution 13 (III) of the Economic and Social Council, the Secretary-General has established the Administrative Committee on Co-ordination, a standing committee of administrative officers consisting of the Secretary-General as Chairman and of the corresponding officers of the specialized agencies brought into relationship with the United Nations. The functions of this Committee were to take all appropriate steps under the leadership of the Secretary-General to ensure the fullest and most effective implementation of the agreements entered into between the United Nations and the specialized agencies. The Committee reports to the Economic and Social Council. 108/

88. Various problems of administrative and financial co-ordination between the United Nations and the specialized agencies at the secretariat level have been studied by ACC in the light of instructions and comments contained in appropriate resolutions of the General Assembly and of the Economic and Social Council and in the reports of the Advisory Committee on Administrative and Budgetary Questions. 109/ Reference to the discussions in ACC relating to some of the administrative and financial matters on which the General Assembly made recommendations to the specialized agencies is to be found in paragraphs 18, 19, 21, 22, 30, 36, 44, 46, 53 and 58 above.

89. The Economic and Social Council has every year considered the ACC reports on co-ordination with the specialized agencies and has either made recommendations or has given directives regarding further efforts towards co-ordination. 110/ Such recommendations and observations in regard to administrative and financial matters have covered such questions as liaison arrangements between the United Nations and the agencies, 111/ development of an international civil service, 112/ establishment of a joint panel of auditors, 113/ presentation of financial estimates, 114/ agency meeting schedules, 115/ criteria for priorities, 116/ and common services. 117/

107/ G A resolutions 125 (II), 210 (III), 310 (IV), 413 (V) and 533 (VI).

108/ E S C (VI), Suppl. No. 6, p. 1 (E/614, E/625 and E/625/Corr.1); E S C (VII), Suppl. No. 11 (E/846); E S C (VIII), Suppl. No. 5 (E/1076); E S C (IX), Annex, p. 220, E/1346 and E/1346/Corr.1 and 2; E S C (X), Annexes, a.i. 24, p. 1, A/1572; E/1682; E S C (XII), Annexes, a.i. 26, p. 1, A/1865; E S C (XIII), Annexes, a.i. 39, E/1991 and E/1991/Add.1; E S C (XIV), Annexes, a.i. 35, p. 1, A/2161 and Corr.1, and p. 8, A/2205; E S C (XIV), Annexes, a.i. 30, p. 5, E/2340, and p. 11, E/2446; E S C (XVI), Annexes, a.i. 8, p. 43, E/2450; E S C (XVII), Annexes, a.i. 19, p. 1, E/2512; E S C (XVIII), Annexes, a.i. 26, p. 2, E/2607 and p. 7, E/2607/Add.1; E/2659.

109/ Ibid.

110/ See E S C resolutions 58 (IV); 128 (VI); 166 (VII); 211 (VIII); 259 (IX); 284 (X); 324 (XI); 402 (XIII); 451 (XIV); 497 (XVI) and 553 (XVIII).

111/ E S C resolution 128 B (VI).

112/ E S C resolution 259 (IX) annex.

113/ Ibid.

114/ Ibid.

115/ E S C resolution 284 (X).

116/ E S C resolution 324 (XI) annex; E S C resolution 451 (XIV) annex.

117/ E S C resolution 324 (XI) annex.

90. In its annual report to the General Assembly, the Economic and Social Council has also included a section on administrative co-ordination between the United Nations and the specialized agencies. 118/

91. Both the Advisory Committee and the Fifth Committee of the General Assembly, when making their recommendations, have always taken into account any recommendations which might be received from the Economic and Social Council or those of its committees charged with the responsibility of co-ordinating the activities of the specialized agencies under the provisions of Articles 57 and 63 of the Charter. 119/

118/ G A (IV), Suppl. No. 3 (A/972), para. 397; G A (V), Suppl. No. 3 (A/1345), para. 398; G A (VI), Suppl. No. 3 (A/1884), paras. 1008 and 1009; G A (VII), Suppl. No. 3 (A/2172), paras. 668-670; G A (VIII), Suppl. No. 3 (A/2430), paras. 920-924; G A (IX), Suppl. No. 3 (A/2686), para. 872.

119/ For example, see G A resolution 533 A (VI).

ARTICLE 18

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TEXT OF ARTICLE 18

1. Each Member of the General Assembly shall have one vote.
2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the Members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.
3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the Members present and voting.

INTRODUCTORY NOTE

1. Article 18 establishes the majority required for the adoption of decisions in the General Assembly. A distinction is drawn regarding the voting procedure to be followed with respect to decisions on two types of questions: decisions on important questions, under paragraph 2 of the Article, which require a vote of a two-thirds majority of the Members present and voting, and decisions on "other questions", under paragraph 3, which require a vote of a majority of the Members present and voting.
2. In the broadest sense, every decision that has been made in the General Assembly has implied an application of Article 18. The present study deals with the Assembly's practice as shown in those decisions and with the application and interpretation given to the various provisions of the Article.
3. The structure of the Article has dictated the sequence of the study. The Assembly's practice under the three paragraphs of the Article is dealt with in separate sections, certain matters common to the two paragraphs being dealt with together. Under each section are headings corresponding either to the wording of the paragraph or to the principal questions which have arisen out of the application of its general provisions to the voting on specific proposals. 1/
4. Thus, section II A deals with the Assembly's practice relating to Article 18 (1).

1/ The term "proposal" is used in this study in a general sense, applying to draft resolutions, amendments, oral proposals, motions etc.

5. Section II B deals with certain matters common to both paragraphs 2 and 3 of the Article -- the meaning of the terms "decision" and "Members present and voting" and also the methods by which decisions have been made. Since these matters are relevant to both paragraphs, it has seemed best to include them in a separate section preceding the study of the individual paragraphs.

6. Section II C deals with the Assembly's practice relating to paragraph 2 of the Article. It is divided into three sub-sections. The first deals with the practice of the Assembly in connexion with the application of the term "important" to proposals -- for the purpose of voting -- without reference to the questions which are specifically enumerated in the paragraph as requiring a two-thirds majority. This sub-section: (1) covers the procedure through which this practice has been developed; (2) deals with the considerations which have been advanced in determining whether the adoption of a particular proposal requires a two-thirds majority, summarizing the debates in their context, under individual cases; (3) enumerates the cases in which the Assembly has declared a question "important" without a significant debate on the issues involved; and (4) also enumerates the cases in which there has been a decision to apply the two-thirds majority without a direct reference to their "importance". The second sub section deals with the questions specifically mentioned in Article 18 (2), in the order in which they are enumerated in that paragraph, in so far as they have been the subject of decisions by the Assembly. The third sub-section discusses the question of the majority required for the adoption of amendments to proposals or parts of proposals relating to important questions -- a subject related to both the first and second sub-sections.

7. Section II D deals with practice relating to paragraph 3 of the Article. It is divided into three sub-sections. The first deals with the practice of the Assembly in deciding, by a majority vote, the preliminary question of whether the vote on a particular proposal should be subject to the simple majority or to the two-thirds majority rule. Although the decisions of the Assembly in this connexion are taken under paragraph 3, the debates shed light primarily on considerations involving the application of paragraph 2 and in particular on the issue of "importance" and are therefore dealt with extensively under section II C. The second is concerned with the determination of additional categories of questions to be decided by a two-thirds majority; it covers the rules of procedure which introduce the two-thirds majority procedure to matters relating to the work of the General Assembly. The third sub-section deals with those questions which the Assembly has determined may be decided by a majority vote.

8. The procedure for the application of Article 18 is provided for in section XII, Plenary Meetings, rules 84 to 97 of the rules of procedure 2/ of the General Assembly, 3/ entitled "Voting". Rules 84, 85 and 87 reproduce textually the three paragraphs of Article 18. Rule 86 governs the voting on amendments to proposals and parts of proposals relating to important questions. 4/ Rules 88 to 93 and 97, which

2/ United Nations Publication, Sales No. : 1954.1.17. The numbers of the rules referred to in the text are from this edition unless otherwise indicated.

3/ See also in this Repertory under Article 21.

4/ See II.C.3, paras. 127-130 below.

deal with questions relating to method and conduct of the voting, and rules 94 to 96, which apply with respect to election, have been treated individually, as appropriate, in the corresponding parts of the study.

I. GENERAL SURVEY

9. A review of the proceedings in the General Assembly reveals that the vast majority of the Assembly's decisions have in fact been made by the affirmative vote of two thirds or more of the Members and that, with comparatively few exceptions, the question of the application of a particular provision of Article 18 has not been raised or discussed in connexion with the voting in plenary meeting.

10. By 9 December 1953, when the eighth session was recessed, the General Assembly had adopted 806 resolutions. Of these, twelve were adopted by a majority vote. The remaining 794 were adopted by a vote of two thirds or more of the Members present and voting, or unanimously. Reference to the application of Article 18, however, was made only in connexion with the voting on twenty of these resolutions as well as with the voting on some thirty proposals which were not adopted, having failed to obtain the required majority.

11. From the above, it can be seen that there have been only relatively few proposals with respect to which the Assembly has found it necessary to refer to the provisions of Article 18 in order to establish the majority required for the adoption of a decision. This would appear to be the result, to some extent at least, of the Assembly's procedure for the consideration of agenda items.

12. Rule 67 of the rules of procedure provides that:

"The General Assembly shall not, unless it decides otherwise, make a final decision upon any item on the agenda until it has received the report of a committee on that item."

During eight regular and two special sessions, the Assembly has decided to consider only some thirty substantive agenda items directly in plenary meeting. In general, therefore, its decisions have been based on draft resolutions which have been previously discussed and voted upon in committee.

13. As for those relatively few proposals with respect to which the question of the application of Article 18 has been specifically raised in plenary meeting, the Official Records show that in most cases the Committee's recommendation on the item in question had been made with a number of abstentions and negative votes, and that divergent views of principle had been expressed during the discussion of that item in committee. At the time a decision was taken in the General Assembly there was, consequently, either an indication that a two-thirds majority might not be obtained if it were determined that Article 18 (2) should apply to the voting, or that there existed a difference of opinion among the Members concerning the "importance" of a particular proposal.

14. The Official Records further reveal that, as a rule, it has not been the practice of the General Assembly expressly to determine, for the purpose of voting, that a proposal was related to one of the questions enumerated in Article 18 (2). When there

has been discussion as to the majority required for the adoption of a particular decision, the Assembly has followed one of two procedures. On some occasions, it has determined that the proposal under consideration was "important" within the meaning of paragraph 2 as a whole and, as such, was subject to the two-thirds majority rule; it has done so either by assent to a suggestion by the President or by a vote of a majority of the Members present and voting. On other occasions, the Assembly has voted directly on the issue of whether a two-thirds or a simple majority was required for the adoption of a given proposal, without any explicit reference to Article 18 (2).

15. Both of these procedures deal with the preliminary question of deciding which provision of Article 18 should govern a particular vote. They would appear, therefore, to constitute an application of paragraph 3 which provides, *inter alia*, that "Decisions on other questions ... shall be made by a majority of the Members present and voting". However, the significance of the debates on this subject resides in the interpretations which have been advanced by Members regarding the meaning of the term "important", and the intent and construction of paragraph 2.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Practice relating to Article 18 (1)

16. Article 18 (1) provides that "Each Member of the General Assembly shall have one vote". A State which is a Member of the United Nations is a "member of the General Assembly". 5/ As regards an applicant State, membership becomes effective in accordance with the provisions of rule 139 of the rules of procedure, which states:

"The Secretary-General shall inform the applicant State of the decision of the General Assembly. If the application is approved, membership will become effective on the date on which the General Assembly takes its decision on the application."

B. Practice relating to both paragraphs 2 and 3 of Article 18

1. *Meaning of the term "decision" as used in Article 18*

17. The question of the meaning of the term "decision" as used in Article 18 was raised at the fourth session in connexion with the question of the majority required for the adoption of amendments to proposals and parts of proposals relating to important questions within the meaning of the Article 18 (2). 6/ As a result, the Secretary-General was requested 7/ "to make a thorough legal analysis" of the matter and to submit a report to the Assembly at its fifth session.

18. The report 8/ prepared by the Secretary-General dealt at length with the background of the question and, with respect to the term "decisions" stated as follows:

5/ See also in this Repertory under Article 9.

6/ See also II.C.3 below, paras. 127-130.

7/ G A resolution 362 (IV).

8/ G A (V), Annexes, a.i. 49, pp. 1-6, A/1356.

"22. As to the text of the Charter itself, it may be of some interest to note the manner in which the expression 'decisions' is used in the various Articles regarding voting in the Assembly and in the Councils. With respect to the General Assembly, the term 'decisions', as used in Article 18, refers to all types of action which the General Assembly takes by a vote while performing its functions under the Charter; whether it makes 'recommendations' under Articles 10, 11, 13, 14 and others, or takes 'decisions' to admit a State to membership in the United Nations under Article 4 or to expel a Member from the Organization under Article 6, or acts on reports from the Councils, or gives its 'approval' to the budget of the Organization under Article 17 and so forth.

"23. ...

"24. These observations show that the term 'decisions' in the Charter Articles relating to voting is used in a broad sense to cover all types of action by United Nations organs. The text of the Charter, however, furnishes no specific answer to the question whether these 'decisions' are only the final decisions of these organs on matters submitted to them, or whether this term also applies to procedural decisions of these organs made prior to the adoption of final resolutions."

2. Meaning of the expression "Members present and voting"

19. Article 18 refers to decisions of the General Assembly made by "Members present and voting". Rule 88 of the rules of procedure provides that:

"For the purpose of these rules, the phrase 'Members present and voting' means Members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting."

20. The effect of the rule is that the majority required for the adoption of a decision is calculated on the basis of the number of affirmative and negative votes.

21. No such provision was contained in the provisional rules of procedure as adopted and revised by the General Assembly at its first session. 9/ At the second part of the first session, during the discussions in the First Committee on the admission of new Members to the United Nations, 10/ the Chairman ruled that an amendment which had received 19 votes in favour, 14 against and 16 abstentions had failed to receive the majority necessary for adoption. He stated that those who abstained must be considered as participating in the voting. His ruling was rejected by the Committee by 46 votes to 4, with 1 abstention. The same point arose during the first special session of the General Assembly. 11/ In this instance, the Chairman of the First Committee ruled that those voting included only those voting for or against. His ruling, though questioned, was not formally challenged.

9/ United Nations Publications, Sales No.: 1947.1.4.
10/ G A (I/2), 1st Com., 13th mtg., pp. 43-46. In addition to the Chairman's ruling, see relevant statements by Bolivia, Cuba, El Salvador, New Zealand, Poland and Union of South Africa.
11/ G A (8-I), 1st Com., 57th mtg., pp. 346 and 347. In addition to the Chairman's ruling, see relevant statements by Iran and USSR.

22. The new rule was proposed by the Committee on Procedures and Organization 12/ established under General Assembly resolution 102 (I) and was adopted unchanged by the General Assembly at its second session. 13/ An amendment, 14/ submitted in the Sixth Committee, to state that "For the purpose of these rules, the phrase 'Members present and voting' means Members casting an affirmative or negative vote or abstaining" was rejected by 21 votes to 16. On that occasion, 15/ it was stated in favour of the amendment that abstention was a means of voting on a par with casting an affirmative or negative vote; against the amendment it was said that to count Members abstaining as participating in the vote would make an abstention equal to a negative vote.

23. The expression "members present and voting" is not used in Articles 108 and 109. Article 108 provides that amendments of the Charter shall come into force when they have been adopted "by a vote of two thirds of the members of the General Assembly" and ratified by two thirds of the Members. Article 109 concerning the holding of a General Conference to review the Charter, refers in paragraph 1 to "a two-thirds vote of the members of the General Assembly", and in paragraph 3 to "a majority vote of the members of the General Assembly". Moreover Article 10 (1) of the Statute of the Court, concerning the election of the members of the Court, provides that "Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected"; the words "absolute majority" have consistently been interpreted in the United Nations as the smallest number greater than half the potential voters, regardless of whether they were present or voted.

3. Method of making decisions

a. BY VOTE IN PLENARY MEETING

1. Show of hands or roll-call

24. Rule 89 of the rules of procedure provides that:

"The General Assembly shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the Members, beginning with the Member whose name is drawn by lot by the President. The name of each Member shall be called in any roll-call and one of its representatives shall reply 'Yes', 'No' or 'Abstention'. The result of the voting shall be inserted in the record in the English alphabetical order of the names of the Members."

11. Secret ballot

25. Rule 94 of the rules of procedure provides that:

"All elections shall be held by secret ballot. There shall be no nominations."

12/ G A (II), Plen., pp. 1455-1483, annex 4 (A/388).

13/ G A (II), Plen., vol. II, 118th mtg., p. 1100. The resolution was adopted without objection, but six abstentions were recorded.

14/ G A (II), 6th Com., annex 4g, (A/C.6/186), p. 274, para. 8, draft resolution submitted by USSR.

15/ G A (II), 6th Com., 57th mtg., p. 138, relevant statements by Egypt and United Kingdom.

26. Whether a ballot is valid or invalid is decided by the President on the advice of the tellers. This procedure was confirmed during the first part of the first session, 16/ when the President was requested to inform the Assembly why certain ballots had been declared invalid in connexion with the election of the members of the Economic and Social Council. The President expressed the view that the tellers and the Chair must decide on the validity of a ballot, and that no explanation was called for. By 24 votes to 13, the Assembly rejected the request for information concerning the invalid ballots.

27. At a previous meeting 17/ the President had, however, consulted the Assembly on a point which he did not wish to settle on his own authority, namely, whether a ballot bearing only four names was invalid when there were six elective places to be filled. In the light of the views which were expressed, the President understood it to be the sense of the Assembly that a ballot paper bearing more names than place to be filled was invalid, but that a paper bearing less names than places was a valid partial vote. On the same occasion, when one place remained to be filled, the President stressed that the Members could only vote for one of the two candidates who had received the highest number of votes in the last ballot, or abstain. A ballot paper bearing any other name would be considered as invalid.

111. Non-participation in the vote

28. Statements have been made by a group of Members or by one Member alone, announcing non-participation in a vote.

29. During the second part of the first session, 18/ several representatives stated that the Trusteeship Agreements which had been approved earlier by the Assembly could not serve as a basis for the establishment of the Trusteeship Council and that, therefore, they were unable to participate in the election of two members to the Council.

30. During the fourth session, 19/ certain representatives announced that they would not participate in the debate on the item relating to the political independence and territorial integrity of China. When a question arose regarding the quorum in connexion with a vote, 20/ one representative stated that his delegation had been present but had not participated in the voting.

31. At the conclusion of the debate on the Korean question during the seventh session, 21/ one representative, speaking in plenary meeting on his Government's position with respect to the Korean question as a whole, explained the reasons why his delegation had declined to participate in all but one of the votes which had taken place in the First Committee and requested that it should appear in the Official Records that his delegation had not participated in the voting.

16/ G A (I/1), Plen., 6th mtg., pp. 96-98, relevant statements by China, Cuba, Ecuador and United Kingdom.

17/ G A (I/1), Plen., 4th mtg., pp. 81 and 82, relevant statements by China, El Salvador and United Kingdom.

18/ G A (I/2), Plen., 63rd mtg., pp. 1321 and 1322, statements by Byelorussian SSR, Ukrainian SSR, USSR and Yugoslavia.

19/ G A (IV), Plen., 272nd mtg., p. 565, statements by Poland and USSR.

20/ G A (IV), Plen., 273rd mtg., p. 571, statement by Yugoslavia.

21/ G A (VII), Plen., 430th mtg., p. 724, statement by India.

b. BY ACQUIESCENCE

32. In practice, proposals representing a decision of the General Assembly have frequently been considered as adopted without a formal vote having been taken in plenary meeting. Thus, for example, applicant States have been admitted to the United Nations by "acclamation"; 22/ draft resolutions recommended by Committees, in particular the Fifth Committee have been declared by the President to be adopted in the absence of objections; 23/ procedural matters have most often been decided at the suggestion of the President with the consent of the Members, and tacit assent has been given, as well, to rulings on matters of consequence such as the application of Article 18 (2) to the voting on a particular proposal. 24/ On occasion, in the case of a resolution declared adopted by the President, abstentions or negative votes have been recorded at the request of Members after the decision had been announced. 25/

c. BY CONSULTATION OF MEMBERS

33. The rules of procedure provide for two types of decisions which can be made by means other than a vote in plenary meeting: the place of meetings of the General Assembly and the summoning of special sessions.

34. Rules 3 and 4 provide for the holding of sessions elsewhere than at the Headquarters of the United Nations -- rule 3, in pursuance of a decision of the General Assembly at a previous session, or at the request of a majority of the Members and rule 4, at the request of any Member with the concurrence of a majority. Both of the sessions held away from Headquarters have taken place pursuant to a decision taken in plenary meeting at a previous session.

35. Rules 8 and 9 provide for the summoning of special sessions of the General Assembly on request -- rule 8, at the request of a majority of the Members and rule 9, at the request of any Member with the concurrence of a majority.

36. The Assembly has held one special session at the request of the Security Council and one at the request of a Member.

37. On 2 April 1947, the United Kingdom requested the Acting Secretary-General to summon a special session of the General Assembly for the purpose of constituting and instructing a special committee to prepare for the consideration of the question of Palestine at the second regular session of the General Assembly. In transmitting the United Kingdom request to the other Members of the United Nations, the Acting Secretary-General asked that he be notified whether the Governments concurred. On the day that a majority had signified its concurrence, the Secretary-General informed the Members that a special session would be convened. 26/

38. The same procedure of consultation was followed in June 1952 upon receipt by the Secretary-General of a request by a group of Members that a special session should

22/ G A (V), Plen., 289th mtg., p. 176.

23/ G A (VII), Plen., 409th mtg., p. 452.

24/ G A (VII), Plen., 401st mtg., p. 333. See also II.C.1.a, paras. 43-46 below.

25/ G A (II), Plen., vol. II, 119th mtg., p. 1100; 123rd mtg., pp. 1280 and 1281.

26/ A/295 and Corr.1.

be summoned to give urgent consideration to the situation in Tunisia. At the expiration of the thirty-day period provided for in rule 9 of the rules of procedure the Secretary-General notified the Members that the number of replies received signifying concurrence in the request had been less than the majority required for summoning of the session. 27/

C. Practice relating to Article 18 (2)

1. Question of the application of the term "important" to proposals without reference to the questions enumerated in Article 18 (2)

39. A large variety of subjects have been qualified as "important" in the General Assembly. In effect, the Official Records reveal that more often than not the importance of a particular question is stressed by speakers in debate, at times unanimously, before a decision is reached in the Assembly.

40. The term is relevant to the practice of the General Assembly under Article 18 only in so far as it has been applied to questions in connexion with the determination of the majority required for the adoption of decisions. Even in this more limited sense, however, the view of the Assembly has not always been expressly stated. Many decisions have been made by two thirds or more of the Members present and voting, without any indication as to whether the Assembly considered that a two-thirds majority was, in fact, required for their adoption. Except for those which can be readily identified as relating to questions enumerated in paragraph 2, it clearly cannot be asserted that all such decisions constitute an application of that paragraph. Neither can it be inferred that none of these relate to "important questions" within the meaning of that paragraph, solely because the Assembly did not so state when the voting took place.

41. Each case in which it has been expressly determined that a question is "important" represents a separate action of the General Assembly taken in particular circumstances. It must be pointed out, however, that the decisions in this regard often refer to draft resolutions containing several parts. It is not always possible, therefore, to establish precisely the elements of a given draft resolution which led the Assembly to determine that the vote of a two-thirds majority of the Members present and voting was required. Furthermore, only in a few instances has there been a procedural discussion or an interpretation by the President which would indicate the grounds on which a draft resolution was considered important. Five such cases are reviewed in paragraphs 46-100, below. In other instances, the Assembly has determined, without significant discussion, that a question was important (for examples, see paragraph 101) within the meaning of Article 18 (2) or it has applied the two-thirds majority rule without reference to the importance of the question (for examples, see paragraph 102). Even when the Assembly has held a procedural discussion, the Official Records show that while Members might agree generally on the importance of a particular question, they did not always agree on the reasons for its importance.

a. PROCEDURE FOR APPLICATION

42. Whether a particular question was important within the meaning of Article 18 (2) has been determined in the General Assembly by a vote of the majority of the Members

27/ A/2143.

present and voting or by tacit assent to a statement by the President to which no objection was raised.

43. The first procedure has been followed at the request of a Member or at the suggestion of the President. 28/

44. Alternatively, the President has ruled that a particular vote referred to an important question or that a particular resolution required a two-thirds majority in order to be adopted, or has based a ruling on a precedent established at a previous session with respect to the voting on the subject under consideration. 29/ In some cases, the President's statement has been made after the vote had been taken when the adoption of a resolution, or the failure of adoption, has been announced on the basis of whether or not a two-thirds majority of the Members present and voting had been obtained. 30/

45. The scope of the questions to which the term "important" has been applied, for the purpose of voting, has varied widely; sometimes an item has been termed important for the purpose of voting; one particular paragraph of a resolution has been singled out as requiring a two-thirds majority; and the vote on a paragraph has been divided into two parts for the purpose of voting, one part being considered "procedural" and the other "substantive". 31/

b. CONSIDERATIONS INVOLVED IN DETERMINING WHETHER THE ADOPTION
OF A PROPOSAL REQUIRES A TWO-THIRDS MAJORITY

46. As mentioned above, only in a few instances has the General Assembly engaged in a procedural discussion which would give some indication of the grounds on which it has based its decision that a particular proposal was or was not important within the meaning of Article 18 (2). Below are considered five cases in which the Assembly's decision was preceded by a significant discussion concerning the application of Article 18.

- i. Treatment of Indians in the Union of South Africa;
- ii. Question of South West Africa;
- iii. Admission of new Members;
- iv. Libya;
- v. Information from Non-Self-Governing Territories.

47. During the discussions relating to one or more of these subjects, the following questions were raised: 32/

(1) Whether the subject in question came within the definition of one of the "important questions" listed in Article 13 (2) (i, ii, iii, iv).

28/ G A (II), Plen., vol. I, 108th mtg., pp. 743 and 744; 106th mtg., p. 666.

29/ G A (VII), Plen., 409th mtg., p. 451; G A (I/2), Plen., 61st mtg., p. 1264;
G A (VII), Plen., 401st mtg., p. 330.

30/ G A (III/1), Plen., 186th mtg., p. 996.

31/ G A (III/2), Plen., 218th mtg., p. 583; G A (II), Plen., Vol. II, 118th mtg., pp. 1095 and 1096; G A (IV), Plen., 273rd mtg., p. 570.

32/ The numbers in parentheses at the end of the following paragraphs refer to the cases under which the questions were discussed.

(2) Whether the enumeration of important questions in Article 13 (2) was intended to be exhaustive or illustrative (i, ii, v).

(3) Whether, if the subject did not fall within one of these categories, a prior decision was not required under Article 18 (3) to establish a new category of important questions, or whether a decision could be taken under that paragraph determining that the particular question was "important" for the purpose of voting (i, v).

(4) Whether the two-thirds majority rule should be applied to the entire resolution if one or more paragraphs of it fell within one of the categories enumerated in Article 18 (2) (iv).

(5) Whether that rule should be applied if the subject-matter of the draft resolution in question was related to the subject-matter of a resolution previously adopted by a two-thirds majority (iii).

(6) Whether a two-thirds majority was required for the reaffirmation of a resolution previously adopted by a two-thirds majority (ii).

(7) Whether the intrinsic importance of the subject under discussion was, in itself, sufficient to justify a two-thirds majority (i, ii, iii, iv, v).

(8) Whether the importance of the subject under consideration or that of the decision to be taken on that subject should be the deciding factor in judging whether a two-thirds majority was required (i).

(9) Whether the importance of the decision should be judged from the importance of the effects which the draft resolution would have if adopted (i, ii, iii, iv, v)

48. The following is a brief summary of the five cases, showing the context and the manner in which these issues were raised.

i. Treatment of Indians in the Union of South Africa

49. During the second part of the first session, the Assembly considered a draft resolution recommended by the Joint First and Sixth Committee, 33/ which took note of the application of the Government of India and, in the operative part, stated that the friendly relations between the two Member States had been impaired, expressed an opinion regarding the international obligations existing between the two Governments and requested them to report on the situation at the next regular session.

50. An amendment to the draft resolution was submitted in plenary meeting by the Union of South Africa, 34/ requesting an advisory opinion of the International Court of Justice on whether the matters raised in the Indian application were essentially within the jurisdiction of the Union.

33/ A/205.
34/ A/205/Add.1.

51. At the conclusion of the general discussion, 35/ the President stated that before proceeding to the vote he wished to know whether the Assembly considered the question to be an important matter requiring a decision by a two-thirds majority of the Members.

52. In favour of such a decision the importance of the question was stressed and the view was expressed that the greatest measure of agreement should be ensured on all matters of importance; therefore a two-thirds majority was necessary so that the full weight of the Organization might be behind every important decision as a protection for minorities. The decision which the Assembly was about to take would determine the fundamental rights of a Member to appeal to the International Court of Justice, and if the two-thirds majority rule were not applied, the Assembly would stultify the rules of procedure which were devised to protect a small nation from the vote of a simple majority on a matter which was vital to its own existence.

53. Further, the case had been presented originally in the First Committee as a very serious one because friendly relations between two countries had been affected, and it was for that reason that a recommendation had to be made by the General Assembly. Thus, the recommendation which was about to be made fell within the phrase "recommendations with respect to the maintenance of international peace and security" and was, therefore, specified in Article 18 (2) as requiring a two-thirds majority.

54. Against the application of the two-thirds majority rule, it was argued that while every question that the Assembly discussed was important, Article 18 indicated the matters which were to be considered important for the purpose of voting. The matters under discussion were not important from that point of view. The "scheme" of Article 18, it was contended, showed that if that Article stopped at paragraph 2, the definition of important questions would appear to be illustrative but not exhaustive; paragraph 3, however, made the category in paragraph 2 exhaustive and it could be added to only by a majority of the Members present and voting. The Assembly should make decisions to this effect only in exceptional cases where drastic action was to be taken against a Member. In the present case, however, the operative part of the draft resolution submitted by the Joint First and Sixth Committee merely requested the Union of South Africa and India to report at the next session on the measures the two Governments had taken. The Assembly had suspended action and only at the next session, if the South African Government had not acted, would the Assembly call it to account; if the question came up at that time, it might be argued with some force that it would be a matter of such importance as was contemplated in Article 18. The amendment proposed no action either; the Union of South Africa merely proposed that the International Court be asked for an advisory opinion.

55. In connexion with the interpretation of paragraphs 2 and 3 of Article 18, it was stated that the important questions referred to in paragraph 2 were exceptional and as such must be interpreted very strictly, whereas paragraph 3 mentioned "decisions on other questions", meaning individual questions, as distinct from "categories of questions to be decided by a two-thirds majority". If, therefore, the Assembly wished to consider a question important, the decision must be preceded by another decision to add a new category into which the particular question would enter.

56. Summing up the debate, the President concluded that there was no reason to apply Article 18 (2) on that occasion and that, in fact, the terms of the paragraph referred

35/ G A (I/2), Plen., 52nd mtg., pp. 1048-1060, relevant statements by Argentina, Colombia, El Salvador, India, Saudi Arabia, Union of South Africa, USSR and Uruguay.

not to questions taken individually but to categories of questions. As to whether the matter before the Assembly related to the maintenance of international peace and security, the President suggested that the situation would be clearer if Article 14 were read in conjunction with Article 18 (2).

57. During the discussion, a distinction was, however, drawn by some Members between the draft resolution which, it was stated, referred to a question of substance involving the maintenance of international peace and security, and required a two-thirds majority in accordance with Article 18 (2) and the amendment which, it was held, referred to a matter of simple procedure dealing with the question of competence, on which advice was to be sought. With respect to the latter, it was also argued that, in accordance with Article 90, a request for an advisory opinion was not a question calling for a two-thirds majority and that, moreover, the Assembly in so deciding would create a dangerous precedent.

58. Before proceeding to the vote, the President stated that if the Assembly decided, by a majority vote, that the question was important and had to be decided by a two-thirds majority, then all related questions would also require a two-thirds majority. The question which was to be decided was not whether the decision was an important decision but whether the question which had been discussed was an important question. An objection was raised to this formulation on the ground that the Assembly did not have to decide whether the matter was important or not but had to decide, rather, the method or procedure to be adopted in voting on the draft resolution. A question might be very important, but the decision to be taken on that question might be unimportant so that it would not be necessary to declare the decision important or so vote on it with the same majority as on the question itself. Article 18 (3), said nothing about the importance or unimportance of a question. It said only that decisions on other questions -- apart from those mentioned in paragraph 2 -- were to be made by a majority vote. It was suggested, therefore, that the Assembly should vote on whether it considered it necessary, in conformity with Article 18 (3), to call for a vote by a two-thirds majority.

59. The President, expressing practical agreement with that view, put the question to the Assembly as follows:

"Does the Assembly consider it necessary to apply the two-thirds majority rule to the decisions which will be taken on the question referred to in document A/205?"

60. By 29 votes to 24, with 1 abstention, the Assembly decided that the decisions to be taken required a two-thirds majority. (Immediately preceding the vote, the President confirmed that the manner in which the question was put to the Assembly could not create any precedent.)

ii. Question of South West Africa

61. During the second session, the Fourth Committee recommended the adoption of a draft resolution on the question of South West Africa under the agenda item "Consideration of proposed new Trusteeship Agreements, if any". The draft resolution, 36/ in its preamble, dealt with the background of the question in relation to General Assembly resolutions 9 (I) and 65 (I) and to Chapter XII. In its

36/ G A (II), Plen., vol. II, pp. 1537-1543, annex 13 (A/422).

operative part, the draft resolution (1) maintained the recommendation that South West Africa should be placed under the Trusteeship System; (2) urged the Government of the Union of South Africa to propose a Trusteeship Agreement for the Territory and expressed the hope that the Union Government might find it possible to do so "in time to enable the General Assembly to consider the Agreement at its third session"; (3) authorized the Trusteeship Council to examine the report on South West Africa which had been submitted by the Union Government and "to submit its observations thereon to the General Assembly".

62. Immediately following the introduction of the Committee's report, 37/ the President was requested to inform the Assembly as to whether a two-thirds majority was required for the adoption of the draft resolution. Attention was drawn to the fact that, during the first and second parts of the first session, at the time of the adoption of resolution 9 (I), concerning the submission of Trusteeship Agreements, and resolution 65 (I), concerning the future status of South West Africa, there had been no ruling to the effect that a two-thirds majority was required. 38/ Thus, for two consecutive sessions the Assembly had made no decision on the matter. The recommendation which was being considered at present was substantially a reaffirmation of previous resolutions, and if the Assembly were required to adopt a similar resolution in successive years, it would be strange to hold that a two-thirds majority would be required on each occasion.

63. Regarding the words "operation of the Trusteeship System" contained in Article 18 (2), it was argued that they covered a field much narrower than would be the case if the words "Trusteeship System" alone had been used. The term "operation" was meant to apply to situations where the Trusteeship System was enforced and working; the resolution under consideration related to a stage prior to that of operation. In conclusion, it was urged that the two-thirds majority rule not be unduly extended, lest the decision of a simple majority in committee should give way in plenary meeting to the views of a minority.

64. In reply, the President stated that the matter would be settled by a decision of the Assembly after the subject had been fully discussed.

65. In connexion with an amendment 39/ submitted in plenary meeting, it was pointed out by the sponsor that, as a result of negotiations which had taken place in a sub-committee established by the Fourth Committee, a joint text had been agreed upon and at that time the only point remaining at issue had been whether a definite time-limit should be fixed for the submission of a Trusteeship Agreement for South West Africa. However, the Fourth Committee had decided, by a vote of 27 to 20, with 4 abstentions, to recommend instead the text which was before the General Assembly. This text had not obtained the two-thirds majority which it was felt was necessary in plenary meeting inasmuch as the question was important and was also related to the operation of the Trusteeship System; the amendment was submitted in the hope that the necessary majority might be obtained, and this would not be the case if the Committee's recommendation were put to the vote. It was of the highest importance, it was

37/ G A (II), Plen., vol. II, 104th and 105th mtgs., pp. 573-648, relevant statements by Argentina, Australia, Denmark, France, Haiti, India, Iraq, Pakistan, USSR and United States.

38/ This statement was subsequently corrected. During the second part of the first session (64th plenary meeting), the President had stated that a two-thirds majority was required for the adoption of a draft resolution on this question, and no objection was raised to the ruling.

39/ A/429, amendment submitted by Denmark.

emphasized, that the appeal should be made with the authority derived from the support of two thirds or more of the Members.

66. The view that the question was both important and related to the operation of the Trusteeship System was supported by other Members. The placing of a Non-Self-Governing Territory under trusteeship was a step of vital importance affecting the lives and living conditions of every inhabitant of the Territory. Moreover, the question of whether or not a sovereign State was under obligation to place a territory under trusteeship was a still more important question. In addition, a resolution which authorized the Trusteeship Council to engage in specified activities was certainly concerned with the "operation" of the Trusteeship System.

67. In favour of the opposite view, it was maintained that Article 18 and the rules of procedure taken together showed that the case under consideration did not require a two-thirds majority. The list of "important questions" contained in paragraph 2 of the Article was absolutely restrictive and since "the legislators" had thought it necessary to enumerate the cases considered important, the Assembly could not, without misinterpreting the law, distort the limitations which that Article established nor, by a process of assimilation, admit other cases which appeared to be similar. It was further maintained that Article 18 clearly stated which trusteeship questions were considered important. These questions were confined to the election of the non-permanent members of the Trusteeship Council and questions relating to the operation of the Trusteeship System; all other trusteeship questions not mentioned in the Article were not considered important under paragraph 2. A recommendation that a Member should submit a draft Trusteeship Agreement could not be considered as relating to the "operation" of the System; it was not a matter of discussing the terms of the Agreement itself nor the operation of an Agreement already in existence, but merely the fact that such an Agreement should be submitted.

68. It was further stated that the draft resolution simply repeated a decision taken the previous year; although the subject matter of a question might be important, its repetition in a draft resolution was not necessarily an important question within the meaning of Article 18 (2). The importance of a question had to be judged from the facts of the particular case, on which there might be varying opinions. The best procedure would be to leave it to each Member to interpret whether the question was important, and the decision of the majority should be binding on all.

69. During the discussion which ensued as to whether the issue should be settled by a decision of the Assembly itself or upon an appeal against a ruling of the President, additional views were expressed regarding the application of Article 18.

70. It was maintained that the matter was important because it implied a vote of censure upon the conduct of a Member. The scope of the discussion and the far-reaching consequences which the adoption of the draft resolution might have, also showed that the question was undoubtedly of sufficient intrinsic importance to lead to the application of Article 18 (3). Regarding the opinion that the list of important questions contained in paragraph 2 was restrictive, it was noted that the list was, in fact, an unusually comprehensive one, ending as it did with a category regarding budgetary questions; if the paragraph were truly restrictive in its effect, it would not end with a reference to so comprehensive an item.

71. As to the question of the connexion of the draft resolution with the "operation of the Trusteeship System", it was stated that the reference in Article 18 (2) was simply an indication that the trusteeship category, in itself, marked the subject-matter as important. In addition, the question of whether a Trusteeship Agreement had to be submitted for a particular territory was at least as important a question as the

details of the Agreement when it was submitted. Finally, whatever interpretation was given to the provision of Article 18 concerning the operation of the Trusteeship System, the draft resolution proposed to give certain powers to the Trusteeship Council itself; it thus fell within the scope of that provision.

72. It was further maintained that if a similar draft resolution had been sufficiently important the previous year to require a two-thirds majority, the same majority would be required for the present and future draft resolutions on the question, since nothing could alter the substance of that question.

73. At the conclusion of the discussion, the Assembly was requested to vote "on the interpretation of the President that the subject was one of importance" requiring a two-thirds majority. Requested to clarify this, the President stated that Members of the Assembly were to judge the question as a matter of substance, and that those considering it to require a two-thirds majority should vote affirmatively. The proposal that the subject was one of importance requiring a two-thirds vote was adopted by 31 votes to 20, with 5 abstentions. The amendment was adopted by 36 votes to 9, with 11 abstentions. The resolution, as amended, was adopted by 41 votes to 10, with 4 abstentions.

iii. Admission of new Members

74. During the sixth session, the Assembly considered three draft resolutions submitted by the First Committee under the item "Admission of new Members, including the right of candidate States to present proof of the conditions required under Article 4 of the Charter". The first and the third draft resolutions were adopted by more than two thirds of the Members without reference to the application of Article 18.

75. The second draft resolution 40/ contained a recommendation to the Security Council to reconsider the applications of certain States and to consider the application of Libya for membership in the United Nations.

76. Before a vote was taken on this draft resolution, 41/ the view was expressed that the two-thirds majority rule should be applied since (a) there could be no subject more important than the admission of new Members, (b) the question involved the "admission of new Members to the United Nations" as mentioned in Article 18 (2) and (c) the draft resolution contained a declaration of policy from the General Assembly of the most serious import involving a fundamental interpretation of Article 4. Even if rule 84 42/ did not apply, the question was obviously of the type which under rule 85 43/ the Assembly might consider to be a category of questions additional to those specified in rule 84 and thus subject to the two-thirds majority rule. The President was requested to confirm that rule 84 applied, or alternatively, to permit the Assembly itself to decide. Should the Assembly decide that rule 84 did not apply, the same procedure, it was suggested, should be applied with respect to rule 85 (Article 18 (3)).

40/ G A (VI), Annexes, a.i. 60, pp. 5-8, A/2100.

41/ G A (VI), Plen., 370th mtg., pp. 463-469, relevant statements by Colombia, Poland and United States.

42/ Now rule 85.

43/ Now rule 86.

77. On the other hand, it was maintained that Article 18 (2) did not apply to the recommendation which was to be made to the Security Council; according to that paragraph, a two-thirds majority was required for "the admission of new Members" and the draft resolution did not mean admission; only if the Security Council were to consider the matter and then make a recommendation to the General Assembly in accordance with Article 4 would a two-thirds majority be required.

78. The President replied that, in his opinion, the reference in rule 84 to "the admission of new Members" applied to substantive decisions taken by the Assembly on the subject and did not, on the basis of the text of the draft resolution which was before the Assembly, apply to the case in question. He added that he did not wish to state this opinion in the form of a ruling and that, in order to avoid establishing any dangerous precedents for the future, it would be better for the Assembly to decide only on the majority required in that particular case.

79. The President then consulted the Assembly as to whether "the draft resolution, to be adopted, requires a two-thirds majority of the Members present and voting". The Assembly so decided by 29 votes to 21, with 5 abstentions. The draft resolution failed to obtain the required majority. An explanation of vote 44/ was made to the effect that the resolution had constituted a recommendation to the Security Council for a favourable reconsideration and was therefore a substantive and important question requiring a two-thirds majority. Had it been a mere recommendation for a free reconsideration, the representative added, he would have voted differently.

iv. Libya

80. During the same session, under the agenda item "Libya: (a) Annual report of the United Nations Commissioner in Libya; (b) Annual reports of the Administering Powers in Libya", the Ad Hoc Political Committee recommended a draft resolution 45/ which contained seven operative paragraphs. The second paragraph noted that elections would be held in Libya "in accordance with the provisions of the constitution of the United Kingdom of Libya"; the third, fourth and fifth paragraphs requested the Economic and Social Council and the Secretary-General to undertake certain studies relative to additional assistance to Libya; the sixth requested the Secretary-General and the specialized agencies to extend technical assistance to Libya; and the seventh concluded that Libya "should now be admitted to the United Nations in accordance with Article 4 of the Charter and the General Assembly's previous recommendations on this subject".

81. Before a vote was taken on the draft resolution, the view was expressed that the two-thirds majority rule should apply to the vote for the following reasons: (a) the question was important within the meaning of Article 18 (2), and the recommendation under discussion was one of the most significant draft resolutions before the Assembly; (b) the ratification by the General Assembly of the constitution of a new independent State was, on the face of it, of the greatest importance; (c) if this argument were not accepted, there was the additional argument that paragraph 7 of the draft resolution was related in some degree to the question of the admission of new Members and the General Assembly had previously decided that a resolution regarding new admissions required a two-thirds majority; 46/ (d) if those arguments were rejected,

44/ G A (VI), Plen., 370th mtg., p. 469, statement by Thailand.

45/ G A (VI), Annexes, a.i. 20, pp. 2-5, A/2097.

46/ See "Admission of new Members", paras. 74-79 above.

paragraphs 3 and 4 of the draft resolution and, even more particularly, paragraphs 5 and 6 involved potential budgetary implications, which would seem to imply that the draft resolution required a two-thirds majority.

82. In opposition to this view, it was argued that the request for a two-thirds vote related to paragraphs 3 and 4 of the draft resolution because only a few votes had been cast in committee against the remainder. Article 18 (2) it was pointed out, left the door open for the Assembly, by majority vote, to list other subjects as requiring a two-thirds majority; this had been done because it was not possible to mention in Article 18 all questions of real importance. The Assembly had to employ some principle in adopting the exceptional requirement and one such principle would be to require the two-thirds majority for resolutions which would have permanent effects, would have irreparable results or would place some Member in particular in difficulties by laying upon it some burden that it would be bound, even though only morally, to assume. None of these situations obtained under paragraphs 3 and 4 of the above-mentioned draft resolution which were purely procedural.

83. At the conclusion of the discussion, the President stated that, as in the previous case, he was of the opinion that the draft resolution did not require a two-thirds majority but he would request the Assembly to decide the question, making it clear that the issue before the Assembly was whether the draft resolution under consideration required a two-thirds majority. The President added that he was putting to the vote a concrete case contained in a particular draft resolution, and not a rule, because, in his view, it would be dangerous to establish the precedent that when the Assembly decided that a draft resolution required a two-thirds majority, each of the subjects mentioned in the various paragraphs of the preamble or operative part of that draft resolution would invariably require a two-thirds majority; in this way, resolutions affecting each other would set up a chain reaction until the ordinary rule of voting by simple majority would become inapplicable.

84. The Assembly decided by a majority vote that the adoption of the draft resolution did not require a vote of two-thirds of the Members present and voting. 47/

v. Information from Non-Self-Governing Territories

85. During the second session, the Fourth Committee submitted a report recommending the adoption of five draft resolutions under the item: "Information from Non-Self-Governing Territories: (a) Summary and analysis of information transmitted under Article 73 e of the Charter; report of the Secretary-General. (b) Information transmitted under Article 73 e of the Charter; report of the Ad Hoc Committee". The first four were adopted without any discussion regarding the voting procedure.

86. The fifth draft resolution 48/ dealt with the establishment by the General Assembly of a special committee composed of Members transmitting information and of an equal number of other Members elected for a two-year period, to examine the information and report thereon to the Assembly with such recommendations as might be deemed appropriate. The draft resolution authorized the special committee to take certain steps for this purpose.

47/ For statements by Chile and United Kingdom, see
G A (VI), Plen., 370th mtg., pp. 473-476.

48/ G A (II), Plen., vol. II, pp. 1543-1548, Annex 14 (A/424).

87. Before the vote, 49/ it was maintained that the draft resolution constituted an important question within the meaning of Article 18 (2). During the previous session, when the Assembly had considered the establishment of an ad hoc committee to examine the information on Non-Self-Governing Territories, it had been maintained that the draft resolution then under consideration did not require a two-thirds majority because the proposed ad hoc committee would exist for one year only and would have very limited functions. No ruling had been made on the matter and the Assembly had not voted on whether the draft resolution should be considered as an important question. On this occasion, however, the draft resolution under consideration proposed the establishment of an apparently permanent organ of the General Assembly with broad powers of recommendation; the proposed special committee, with members elected for two-year terms, corresponded roughly to the Trusteeship Council in its composition, in certain of its functions and powers and in its permanency. A resolution setting up a permanent committee which would have a life of at least two years was an important question which should be decided by a two-thirds majority.

88. On the other hand, the view was expressed that there was no intention that the committee should be of a permanent nature; the members would be elected for a period of two years and an amendment 50/ had been submitted stipulating that the establishment of the committee was "an experimental measure". Furthermore, there was no fundamental difference between the ad hoc committee which had been established the previous year and the committee now proposed except that, in order to give it greater prestige, it was to be appointed by the General Assembly rather than by the Fourth Committee.

89. At the conclusion of the discussion, the President stated that, if there were no objections, the Assembly might proceed to the vote in accordance with Article 18 (2), as had been suggested. A vote was requested on the proposal to apply the two-thirds majority rule. The proposal was adopted by 29 votes to 22, with 5 abstentions. The amendment and the draft resolution itself were rejected by a majority of the Members. A substitute text was adopted by more than a two-thirds majority.

90. During the eighth session, the Fourth Committee presented a single report 51/ covering its consideration of three agenda items relating to: (1) Information from Non-Self-Governing Territories under Article 73 e; reports of the Secretary-General and of the Committee on Information from Non-Self-Governing Territories, (2) Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government, and (3) Cessation of the transmission of information under Article 73 e. Seven draft resolutions were recommended for adoption under these items.

91. The question of the application of Article 18 was raised in plenary meeting 52/ before a vote was taken on the draft resolutions. The view was expressed that the vote on any question connected with Chapter XI of the Charter, whatever its importance, required only a simple majority and that the two-thirds majority required for "important questions" under Article 18 (2) could not apply to that Chapter so long as the Assembly had not established a new category for that purpose. This was not to deny the importance of the resolution on "factors", which some Members seemed to consider as requiring a two-thirds majority in view of the importance of the subject.

49/ G A (II), Plen., vol. I, 108th mtg., pp. 735-744, relevant statements by India and United States.

50/ A/446, amendment submitted by India.

51/ A/2556 and Add.1.

52/ G A (VIII), Plen., 459th mtg., pp. 305-320, relevant statements by Belgium, Denmark, Mexico, New Zealand, USSR, United Kingdom and Yugoslavia.

The reference in Article 18 (2) to "important questions" had given rise to doubts as to whether it was meant to apply generally or merely to the categories which were enumerated in that paragraph and any additional ones that the Assembly might establish in accordance with the provisions of paragraph 3. The doubts arose out of a defect in the drafting of the Article; it would not be difficult to imagine the confusion which would have been caused -- during the discussion of matters which some Members considered "important" and others considered "less important" -- if the Charter had mentioned "important questions" without any qualifications. There would then have been no point in enumerating the questions to which the two-thirds majority applied, still less in providing for the determination of additional categories. However, the position was clarified on reading the text of paragraph 3; the term "important questions" was there replaced by the terminology "questions to be decided by a two-thirds majority". This provision established beyond doubt that the founders of the United Nations had in mind "categories of questions" to be decided by a two-thirds majority, i.e., those which, by their importance, gave rise to prolonged and special discussion. As an illustration of this point, it was noted that several of the questions enumerated in paragraph 2 could not be regarded as individual questions but as categories or classes of questions which included a multitude of different matters.

92. In support of the argument that until the Assembly established additional categories there was nothing in the Charter authorizing a decision on other questions by a two-thirds majority, it was further maintained that if the Assembly in the past had sometimes agreed to apply the two-thirds majority rule by a different procedure the reason was to be sought not in Article 18 but in the general terms of Article 10. Regarding the matter under discussion, if any Member desired to propose that the questions mentioned in Chapter XI should be decided by a two-thirds majority, the Member would in fact be proposing the determination of a new category; Article 18 (2) specified the category "questions relating to the operation of the Trusteeship System" but did not include in the list questions relating to Non-Self-Governing Territories. Following a review of the discussions at San Francisco concerning this matter, it was suggested in conclusion that any question relating to Chapter XI should always be decided by a simple majority.

93. A contrary view was held in particular with respect to the draft resolution on "factors". This was stated to be an important question both in the general sense and more particularly as defined in Article 18 (2); in 1951 and again in 1952, the Assembly had voted on the subject with that understanding in mind. The draft resolution which was before the Assembly purported to lay down certain criteria to be taken into account in determining the field of application of Chapter XI; this was clearly an important issue regarding which the Assembly had already taken a stand opposite to the views which had just been expressed and the Assembly would no doubt wish to act with consistency on this occasion.

94. Summarizing the situation, the President stated that according to the record the General Assembly had never been called upon specifically to decide the question, although it had given its tacit assent to a ruling that a two-thirds majority was required on the subject; inasmuch as the question had been raised in this manner, the best course to follow was for the Assembly itself to express its opinion.

95. The Assembly was requested to vote on the motion -- which was adopted by a majority vote -- "to the effect that the draft resolution may be carried by a simple majority".

96. Following the vote on the first five draft resolutions, the President was requested to regard resolutions VI and VII relating to the cessation of the transmission of information with respect to (a) the Netherlands Antilles and Surinam and (b) Puerto

Rico, as raising important questions and subject to the application of rule 84 ^{53/} of the rules of procedure. The decisions of the Assembly in relation to a determination by the Administering Members to cease transmitting information might intimately concern the obligations of those Members and, furthermore, were of supreme importance to the inhabitants of the Territories concerned. Moreover, these decisions of the Assembly involved, to some extent, a judgement upon the actions of the two Members concerned.

97. In reply, the President stated that the decision which the Assembly had already taken concerning the voting procedure had been intended to cover draft resolutions VI and VII as well as draft resolution I. During the procedural discussion which took place as a result of this interpretation, the following additional views were advanced with respect to the application of Article 18.

98. In connexion with the suggestion that all matters deriving from Chapter XI, whatever the importance of the individual case under consideration, should be decided by a majority vote, it was contended that the Charter laid down, under Article 18 (2), that all important matters should be decided by a two-thirds majority, and that paragraph 2 even gave a list of certain items which were regarded as important by definition in the Charter itself. While it was admitted that there might be some ambiguity in the wording of the Article, it was maintained that the word "other" used in paragraph 3 could only relate to unimportant questions. If the operation of the Trusteeship System was considered important, were not matters relating to Chapter XI, by analogy, equally important? While it was possible that under the terms of paragraph 3 the Assembly could decide by majority vote that any question, no matter how important, was not really important but only one of the "other" questions, a decision of this kind would be an irresponsible act on the part of the Assembly. It was to be regretted that on this occasion, instead of determining an additional category of questions to be decided by a two-thirds majority, the Assembly was being asked to decide, on the contrary, that a category relative to Chapter XI should be decided by a majority vote; this was the reverse of the procedure the Charter evidently intended. The motion should not have been put to the vote in this form, it was further argued, since the Charter provided that all questions, except the important ones, were subject to majority decisions, and the important ones were mentioned in paragraph 2. The question before the Assembly, therefore, was whether the two matters which were being discussed (draft resolutions VI and VII) should be governed by the two-thirds majority rule; to vote on the question whether the draft resolutions might be adopted by a majority vote was tantamount to asking the Assembly whether the Charter might be complied with. ^{54/}

99. As to whether the Assembly could decide that important questions, in addition to those enumerated in paragraph 2, should be voted on by a two-thirds majority, it was held that it was difficult to vote on whether a question was important or not; it might have a different importance in the minds of various Members. Moreover, Article 18 required that decisions on important questions should be made by a two-thirds majority and included an exhaustive enumeration of those questions; decisions on other questions were made by a majority vote. Whereas the English text of the Article might be misleading owing to the words "these questions shall include" in

^{53/} Now rule 85.

^{54/} At this point the Assembly rejected a proposal, by majority vote, that the decision previously made should apply only to draft resolution I.

paragraph 2, the French text was more precise in that the phrase "sont considérées comme questions importantes" preceded, as a definition, the enumeration of all those questions which were considered important. Unless a question came within one of those categories, the vote must be taken by a simple majority. Any vote to consider a question important or not was contrary to the Charter because the Charter gave a technical term to important questions and offered a definition and an enumeration of these categories; under paragraph 3, the Assembly could determine as an exceptional measure to vote on other categories by a two-thirds majority, without pronouncing on their importance.

100. Draft resolution VI was adopted, as a whole, by 33 votes to 13, with 8 abstentions. Draft resolution VII was adopted, as a whole, by 26 to 16, with 18 abstentions.

C. CASES IN WHICH A QUESTION HAS BEEN DETERMINED "IMPORTANT"

101. The General Assembly has expressly determined by a majority vote or by assent to a ruling by the President, without significant discussion regarding the application of Article 18, that a question was "important" under the following agenda items:

- (a) Consideration of proposed new Trusteeship Agreements, if any; 55/
- (b) Information from Non-Self-Governing Territories: (a) Summary and analysis of information transmitted under Article 73 e of the Charter; report of the Secretary-General; (b) Information transmitted under Article 73 e of the Charter; report of the Ad Hoc Committee; 56/
- (c) Question of the disposal of the former Italian Colonies; 57/
- (d) The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa; 58/
- (e) The Tunisian question; 59/
- (f) The question of Morocco; 60/
- (g) Draft Convention on the Political Rights of Women; 61/
- (h) The Conciliation Commission for Palestine and its work in the light of the resolutions of the United Nations. 62/

55/ G A (II), Plen., vol. I, 106th mtg., p. 666.

56/ G A (II), Plen., vol. I, 108th mtg., p. 743.

57/ G A (III/2), Plen., 218th and 219th mtgs., pp. 584-587, 591-593, 607 and 608.

58/ G A (VII), Plen., 401st mtg., pp. 333 and 334.

59/ G A (VII), Plen., 404th mtg., p. 377.

60/ G A (VII), Plen., 407th mtg., p. 426.

61/ G A (VII), Plen., 409th mtg., pp. 449 and 450.

62/ G A (VII), Plen., 406th mtg., pp. 413 and 414.

d. CASES IN WHICH THE TWO-THIRDS MAJORITY RULE HAS BEEN APPLIED
WITHOUT REFERENCE TO THE "IMPORTANCE" OF THE QUESTION

102. In connexion with proposals submitted under the following agenda items, the Assembly has applied the two-thirds majority rule without an express reference to the "importance" of the proposal in question.

(a) Two agenda items relating to the Spanish question:

(i) Relations of Members of the United Nations with Spain; 63/

(ii) Question of Franco Spain. Implementation of the resolutions and recommendations of the General Assembly of 12 December 1946 and 17 November 1947; 64/

(b) Application of Article 27 of the Charter dealing with the method of voting in the Security Council;
Calling of a General Conference of Members of the United Nations under Article 109 of the Charter in order to eliminate the so-called veto privilege;
Calling of a General Conference of Members of the United Nations under Article 109 of the Charter for the purpose of reviewing the present Charter; 65/

(c) Threats to the political independence and territorial integrity of China and to the peace of the Far East, resulting from Soviet violations of the Sino-Soviet Treaty of Friendship and Alliance of 14 August 1945 and from Soviet violations of the Charter of the United Nations; 66/

(d) Holding of a Conference to implement the provisions of Chapter XI of the Charter concerning Non-Self-Governing Territories; 67/

(e) Three agenda items relating to the Palestine question:

(i) Palestine: Progress Report of the United Nations Mediator on Palestine; 68/

(ii) Further consideration of the question of the future government of Palestine; 69/

(iii) Palestine: (a) Question of an international régime for the Jerusalem area and protection of the Holy Places; special report of the Trusteeship Council. 70/

63/ G A (II), Plen., vol. II, 118th mtg., pp. 1095 and 1096.

64/ G A (III/2), Plen., 214th mtg., pp. 501-504.

65/ G A (I/2), Plen., 61st mtg., p. 1264. The three agenda items were considered together.

66/ G A (IV), Plen., 273rd mtg., pp. 570 and 571.

67/ G A (I/2), Plen., 64th mtg., pp. 1355-1357.

68/ G A (III/1), Plen., 186th mtg., pp. 993-996.

69/ G A (S.II), Plen., 135th mtg., pp. 33-36.

70/ G A (V), Plen., vol. I, 326th mtg., p. 684.

*2. Practice relating to questions specifically
enumerated in Article 18 (2) 71/*

a. RECOMMENDATIONS WITH RESPECT TO THE MAINTENANCE
OF INTERNATIONAL PEACE AND SECURITY

103. It has already been noted that the vast majority of the decisions of the General Assembly have been made by the affirmative vote of two thirds or more of the Members present and voting and that, in general, the decisions have been made without any direct reference to the application of Article 18.

104. As regards the application of the specific provisions contained in Article 18 (2), the General Assembly has not expressly determined that a particular decision constitutes a "recommendation with respect to the maintenance of international peace and security". It might reasonably be inferred that a statement to this effect has, in practice, not been found necessary. A review of the political and security questions which have come before the Assembly shows that the subject of the agenda item itself often establishes a clear relation to this particular provision, 72/ or that the proposals submitted under the item either use the language of the Charter relative to the maintenance of international peace and security 73/ or refer to one or more Articles which deal with the functions and responsibilities of the General Assembly in this regard. 74/ Furthermore, experience has shown that, in the First and the Ad Hoc Political Committees, to which such questions have generally been referred for consideration and report, the proposals have generally been voted upon, favourably or unfavourably, by substantially more than a two-thirds majority of the Members present and voting. As a rule, the voting in the General Assembly has followed a similar pattern.

105. It should also be remembered that the Assembly has applied the term "important", within the meaning of Article 18, to some questions which, on the basis of the debates in committee and in plenary meeting, might have been considered as relating to "the maintenance of international peace and security". This was the case, for example, with regard to the items on Tunisia, Morocco and Palestine. 75/

b. ELECTIONS OF MEMBERS OF COUNCILS

106. At the regular sessions, the elective places on the Security Council, the Economic and Social Council and the Trusteeship Council have been filled by the candidates who received the votes of at least two thirds of the Members present and voting, in ballots which were held in accordance with the rules of procedure. 76/

71/ No action has been taken by the General Assembly with respect to "Suspension of the rights and privileges of membership" and "expulsion of Members".

72/ Examples: G A resolutions: 109 (II) Threats to the political independence and territorial integrity of Greece; 299 (IV) International control of atomic energy; 378 (V) Duties of States in the event of the outbreak of hostilities.

73/ Examples: G A resolutions: 110 (II) Measures to be taken against propaganda and the inciters of a new war; 291 (IV) Promotion of the stability of international relations in the Far East; 377 (V) Uniting for peace.

74/ Examples: G A resolutions: 41 (I) Principles governing the general regulation and reduction of armaments; 268 (III) Study of methods for the promotion of international co-operation in the political field.

75/ See also II.C.I.c, para. 101, above.

76/ See also in this Repertory under Articles 23, 61 and 86.

c. ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

107. Reference has been made to the application of Article 18 in connexion with the admission of only one of the nine States that have become Members of the United Nations since the first regular session.

108. The admission of eight States was decided by unanimous consent. (The negative vote cast against the admission of Pakistan was subsequently withdrawn.) 77/ The admission of Israel was decided by 37 votes to 12, with 9 abstentions. Announcing the result of the vote, the President confirmed that the two-thirds majority required under Article 18 had been obtained. 78/

d. QUESTIONS RELATING TO THE OPERATION OF THE TRUSTEESHIP SYSTEM

i. Report of the Trusteeship Council

109. From the time of the Assembly's third session, when the Trusteeship Council submitted its first report, the General Assembly has, without discussion, applied the provision in Article 18 (2), relating to the operation of the Trusteeship System, to the voting on the draft resolutions which have been recommended at each session by the Fourth Committee in its reports on items arising out of the report of the Trusteeship Council.

110. During the fourth session, before calling for a vote on the recommendations of the Fourth Committee, the President cited this provision and ruled that a two-thirds majority would be required for the adoption of the operative parts of the six draft resolutions before the Assembly. 79/

111. During the seventh session, a similar statement was made by the President before the voting began. On this occasion, however, no distinction was made between the preamble and the operative part of the draft resolution submitted by the Fourth Committee. 80/

112. During the third, fifth, sixth and eighth sessions, while no reference was made to Article 18 during the discussions of the Trusteeship Council's reports, the record shows that only those draft resolutions or parts of resolutions, including the preambles, which obtained a two-thirds majority were considered as adopted. 81/

ii. Trusteeship Agreements

113. Ten Trusteeship Agreements submitted by Administering Authorities have been approved by the vote of more than two thirds of the Members present and voting in the General Assembly. The Official Records do not, however, contain any express indication as to whether the approval of the Agreements was considered to be a question which related to the "operation of the Trusteeship System".

114. During the second session, in connexion with the discussions on South West Africa, there was some debate as to whether a draft resolution requesting a Member

77/ G A (II), Plen., vol. I, 92nd mtg., p. 316; 96th mtg., p. 338.

78/ G A (III), Plen., 207th mtg., p. 331.

79/ G A (IV), Plen., 240th mtg., p. 188.

80/ G A (VII), Plen., 410th mtg., p. 471.

81/ G A (III/1), Plen., 160th mtg., pp. 489-492; G A (V), Plen., vol. I, 316th mtg., p. 548; G A (VI), Plen., 361st mtg., pp. 348-350; G A (VIII), Plen., 471st mtg., p. 455.

State to submit a Trusteeship Agreement for a Mandated Territory was a question relating to the "operation" of the Trusteeship System. In the course of a procedural debate ^{82/} on the "importance" of the proposal, it was maintained that the meaning of the word "operation" applied to cases where the Trusteeship System was enforced and working, whereas the draft resolution which was then under consideration related to a stage prior to that of operation. The wording of Article 18, it was stated, made it clear that trusteeship questions not mentioned in paragraph 2 were not considered as important and did not require a two-thirds majority; a recommendation for the submission of a draft Trusteeship Agreement was one of such questions. On the other hand, the view was expressed that the placing of a territory under the Trusteeship System was included in the operation of the System itself and a decision regarding the submission of an Agreement for a particular territory was at least as important a question as the details of the Agreement itself. Furthermore, the draft resolution included instructions from the General Assembly to the Trusteeship Council giving the Council certain powers in a particular case: therefore, it came within the scope of Article 18 (2). ^{83/}

111. Recommendations regarding the right of self-determination of peoples

115. Article 18 (2) has been applied to the voting on a proposal submitted under the item: "Human rights. Recommendations concerning international respect for the self-determination of peoples".

116. During the seventh session, the Assembly considered a draft resolution ^{84/} which contained recommendations regarding the right of self-determination of the peoples of Non-Self-Governing and Trust Territories and the steps which should be taken to ensure the direct participation of the indigenous population in the government of those Territories. Before the vote, ^{85/} the President announced that he had been requested to submit to the Assembly that the draft resolution should be considered as an important question under rule ⁸⁴ ^{86/} in connexion with the questions relating to the operation of the Trusteeship System.

iv. Participation of a non-member State in the Trusteeship Council

117. The participation of Italy in the work of the Trusteeship Council was discussed during the sixth session of the General Assembly. At that time, ^{87/} the view was expressed that an abnormal situation existed because Italy, which was entrusted by the United Nations with the administration of the Trust Territory of Somaliland, was unable to exercise the responsibilities of an Administering Authority in the Trusteeship Council. A draft resolution was submitted by the Fourth Committee under

^{82/} G A (II), Plen., vol. I, 104th mtg., pp. 573-580, relevant statements by India and United States.

^{83/} See II.C.1.b(ii), paras. 61-73, above.

^{84/} G A (VII), Annexes, a.1. 30, pp. 9-16, A/2309 and Corr.3.

^{85/} G A (VII), Plen., 403rd mtg., p. 374.

^{86/} Now rule 85.

^{87/} G A (VI), Plen., 352nd mtg., pp. 225-229, relevant statements by Argentina, Brazil, Guatemala and Lebanon.

again in connexion with the budget, the two-thirds majority vote would become the rule in the Assembly. The draft resolution, as amended during the meeting, was adopted by a majority of the Members, by 32 votes to 17, with 5 abstentions. 93/

123. At a later meeting, 94/ during the consideration of the report of the Fifth Committee on the budget for the financial year 1948, two Members who had opposed the adoption of the draft resolution stated that they would not contest the will of the majority by pressing for a separate vote on the item in the budget which dealt with the appropriation of funds for the holding of the session in Europe.

124. In connexion with the adjournment of the third session in Paris, the Assembly considered a draft resolution recommended by the General Committee and various amendments to it. Before the voting 95/ on the Committee's draft resolution, 96/ which was to the effect that the Assembly should reconvene early in 1949 in New York, the President was asked whether the decision did not call for a two-thirds majority. He offered to reply after the vote. The draft resolution was adopted by 43 votes to 13, with 2 abstentions. The President then stated that, in view of the result of the voting, the question of a two-thirds majority did not arise.

125. During the fifth session, the Assembly considered a similar draft resolution 97/ with respect to the holding of the sixth session in Europe. Although the budgetary aspects were referred to by the Members who opposed the draft resolution, no reference was made to the application of Article 18 for the purpose of voting. The Assembly approved the draft resolution by a majority of 31 to 16, with 11 abstentions. 98/

126. The budgetary implications of one paragraph of a draft resolution have also been raised in connexion with the voting on a decision of principle. During the fifth session, a draft resolution 99/ was submitted in connexion with the item relating to the admission of new Members, which requested the distribution of certain documents and letters among the Members. The vote on the paragraph in question was 18 in favour, 15 against and 21 abstentions. The President stated 100/ that in his opinion a two-thirds majority was required in view of the financial implications contained in the proposal. The ruling was not contested and the paragraph was not adopted, having failed to obtain the required majority.

3. Majority required for the adoption of amendments to proposals or parts of proposals relating to important questions

127. Reference has already been made 101/ to the report of the Secretary-General, 102/ which was considered by the General Assembly during the fifth session,

93/ G A resolution 184 (II).

94/ G A (II), Plen., vol. II, 121st mtg., pp. 1201 and 1213, statements by China and United Kingdom.

95/ G A (III/1), Plen., 172nd mtg., p. 733.

96/ G A (III/1), Plen., Annexes, pp. 520 and 521, A/768.

97/ A/1593, draft resolution submitted by Bolivia, Colombia and Peru.

98/ G A (V), Plen., vol. I, 324th mtg., p. 663.

99/ G A (V), Annexes, a.i. 19, pp. 3-4, A/1585, draft resolution submitted by El Salvador.

100/ G A (V), Plen., vol. I, 318th mtg., p. 588.

101/ See II.B.1, para. 18, above.

102/ G A (V), Annexes, a.i. 49, pp. 1-6, A/1356.

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98/ G A (V), Plen., vol. I, 324th mtg., p. 663.

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100/ G A (V), Plen., vol. I, 318th mtg., p. 588.

101/ See II.B.1, para. 18, above.

102/ G A (V), Annexes, a.i. 49, pp. 1-6, A/1356.

on the question of the majority required for the adoption of amendments to and parts of proposals relating to important questions.

128. The report summarized the views which had been expressed on the matter in the Sixth Committee and in plenary meeting at the previous session, analysed the issues and precedents involved in the problem and suggested that the Assembly might wish to be guided by the following considerations in reaching a decision on the question:

"34.....

"(a) The necessity of adopting an orderly procedure permitting the arrival, by successive stages, at the final text of a draft resolution on which the Assembly may vote without any risk of ambiguity.

"It would appear that the most effective method in this respect would be a procedure by which all decisions pertaining to proposals on important questions would be subject to a two-thirds majority requirement.

"(b) The importance of enabling Members of the General Assembly forming a two-thirds majority on a certain question to express, without being hindered by procedural obstacles, their views and their will as to the action to be taken by the Assembly.

"It would seem important in this connexion to prevent the alteration of a draft resolution by a simple majority of the Members in a manner which, when the final vote is taken, would make its acceptance by a majority of two-thirds more difficult.

"(c) The need to protect the rights of the Members forming the minority on the question considered by the General Assembly.

"The best interests of the minority would seem to lie in a fixed and clear rule which does not make the adoption of amendments on parts of proposals on a particular issue dependent on the will of the majority."

129. The text of a new rule was proposed for adoption by the Assembly if it shared the views expressed in the report.

130. During the consideration of the report in the Sixth Committee, a draft resolution was submitted 103/ including a new rule similar in text to that suggested by the Secretary-General. On the recommendation of the Committee, the Assembly adopted 104/ the following amendment to the rules of procedure: 105/

"Decisions of the General Assembly on amendments to proposals relating to important questions, and on parts of such proposals put to the vote separately, shall be made by a two-thirds majority of the Members present and voting."

103/ G A (V), Annexes, a.1. 49, p. 6, A/C.6/L.110, draft resolution submitted by Belgium.

104/ G A (V), Plen., vol. I, 298th mtg., p. 290; G A resolution 475 (V).

105/ Now rule 86.

D. Practice relating to Article 18 (3)***1. Determination of the majority required for the adoption of a proposal***

131. It was noted in the General Survey that the general provision of paragraph 3 relating to "decisions on other questions" has been applied in order to determine, as a prior question, the majority required for the adoption of a particular proposal. The practice of the Assembly in this regard has been dealt with in II.C.1.b. above.

132. It will be seen from the examples given in that section that the action of the Assembly relative to the application of paragraph 3, in this sense, has been determined by the particular circumstances of each case. Each decision, therefore, represents a specific interpretation. On some occasions the Assembly has availed itself of paragraph 3 with the express intention of avoiding a decision on whether the matter to which the proposal referred was "important" within the meaning of paragraph 2. At other times it has followed this course on the understanding that the decision was not to be interpreted as creating a precedent with respect to proposals which might be submitted in connexion with the same subject in the future or to the voting requirements regarding such proposals.

2. Determination of additional categories of questions to be decided by a two-thirds majority of the Members present and voting

133. There has been no decision of the General Assembly which expressly applies to Article 18 (3) regarding the determination of additional categories of questions to be decided by a two-thirds majority of the Members present and voting. However, there are some rules of procedure, dealt with below, which constitute decisions that a two-thirds majority shall be required for certain kinds of procedural questions.

134. The use of the words "important questions" in Article 18 (2) and the use of the phrase "categories of questions to be decided by a two-thirds majority" in Article 18 (3) have, however, given rise to some discussion. It has already been noted that, in practice, the Assembly has applied the term "important" to specific proposals without reference to the questions enumerated in paragraph 2. The distinction between an individual question and a category of questions has been pointed out to support the view that if a particular question is to be regarded as important for the purpose of voting, it must fall within one of the categories established in paragraph 2 (see II.C.1.b(i) and c).

135. The rules of procedure of the General Assembly provide that certain internal matters relating to the work of the Assembly should be decided by a two-thirds majority of the Members.

136. With regard to the consideration of an additional item included in the agenda of a regular session, rule 15 provides:

"Additional items of an important and urgent character, proposed for inclusion in the agenda less than thirty days before the opening of a regular session or during a regular session, may be placed on the agenda, if the General Assembly so decides by a majority of the Members present and voting. No additional item may be considered until seven days have elapsed since it was placed on the agenda,

unless the General Assembly, by a two-thirds majority of the Members present and voting, decides otherwise, and until a committee has reported upon the question concerned".

137. As regards the inclusion of additional items in the agenda of a special session, rule 19 provides:

"During a special session items on the supplementary list and additional items may be added to the agenda by a two-thirds majority of the Members present and voting. During an emergency special session additional items concerning the matters dealt with in resolution 377 A (V) may be added to the agenda by a two-thirds majority of the Members present and voting".

138. Rule 83 provides for the reconsideration, during a session, of proposals which have been adopted or rejected. It states:

"When a proposal has been adopted or rejected it may not be reconsidered at the same session unless the General Assembly, by a two-thirds majority of the Members present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote".

*3. Questions which the General Assembly has determined may
be decided by a majority vote of the Members
present and voting*

a. MATTERS RELATING TO ORGANIZATION AND CONDUCT OF BUSINESS

139. With the exception of the provisions contained in rules 15, 19 and 93, quoted above, matters relating to the organization and the work of the General Assembly and to the conduct of business have been decided by a majority vote, in accordance with the rules of procedure.

b. OTHER "PROCEDURAL QUESTIONS"

140. The procedural, as against the substantive, nature of a question has been raised in connexion with the determination of whether a decision should be made by a simple majority or by a two-thirds majority of the Members. In particular, this distinction has been drawn regarding two matters: (i) a request to the International Court of Justice for an advisory opinion, and (ii) the reference of an item to a subsidiary organ for consideration and report.

i. Request to the International Court of Justice for an advisory opinion

141. During the fourth session 106/ in connexion with the consideration of the report of the Fourth Committee on the question of South West Africa, the President ruled that a draft resolution 107/ to request an advisory opinion of the International Court of Justice was a procedural matter which should not be subject to the two-thirds majority rule.

106/ G A (IV), Plen., 269th mtg., p. 536.

107/ G A (IV), Plen., Annex, pp. 103-110, a.i. 34, A/1180.

142. An objection was raised on the ground that all draft resolutions concerning South West Africa had been dealt with in the past as "important" and, moreover, that, during the second part of the first session, when the Union of South Africa had submitted an amendment in connexion with the question of the "Treatment of Indians in the Union of South Africa", proposing that the question be referred to the Court, the Assembly had decided that the adoption of that amendment required a two-thirds majority. 108/ In reply, the President pointed out that at that time it had been conceded to be an exceptional decision by the General Assembly, reached on the specific understanding that no precedent was to be established by the application, in that particular case, of the two-thirds majority rule to a proposal concerning a request for an advisory opinion to the International Court of Justice. The rule had been applied because the proposal under consideration had been submitted as an amendment to the recommendation of the First Committee. The adoption of the amendment would, therefore, have prevented the General Assembly from voting on the Committee's proposal which, in turn, required a two-thirds majority. It was for that reason alone that it had been decided that a two-thirds majority was required. The case under consideration was different. It concerned a separate draft resolution and only a simple majority was therefore required. The President's interpretation was not challenged.

143. Advisory opinions have been requested on six other occasions. 109/ This action was approved in each case by more than two thirds of the Members, without procedural discussion.

11. Reference of an item to a subsidiary organ for consideration and report

144. During the fourth session, the First Committee recommended the adoption of a draft resolution 110/ under the item relating to the political independence and territorial integrity of China. Under the operative part of the draft resolution, the item would be referred to the Interim Committee for examination and study, and the Interim Committee would be requested to report to the Assembly at its next session with recommendations, or to bring the matter to the attention of the Secretary-General with a view to reporting to the Security Council if it were deemed necessary.

145. Before calling for a vote, 111/ the President stated that in his view the draft resolution was of a procedural nature up to the word "recommendations"; a simple majority would therefore be required. The last sentence he considered substantive, and a two-thirds majority would be required for its adoption. No objection was raised to this interpretation and the Assembly voted on the paragraph accordingly.

146. During the third session, the Assembly considered a draft resolution 112/ proposing that the question of the disposal of the former Italian colonies be referred to the Interim Committee, with the directive that the Committee, after ascertaining the wishes of the native population, through a special investigating sub-committee or otherwise, should present a report, if possible with recommendations, to the next session.

108/ G A (I/2), Plen., 52nd mtg., pp. 1060 and 1061.

109/ See also in this Repertory under Article 96.

110/ G A (IV), Plen., Annex, pp. 234-236, a.i. 68, A/1215.

111/ G A (IV), Plen., 273rd mtg., p. 570.

112/ A/892/Rev.1, see G A (III/2), Plen., 219th mtg., p. 600.

147. Before the vote, 113/ a clarification was requested as to whether the draft resolution was of a procedural nature. The President replied that the Assembly had already rejected various draft resolutions pertaining to the substance of the question and was being called upon to refer the matter to an organ of the United Nations, namely, the Interim Committee; a decision to this effect did not require a vote by a two-thirds majority of the Members. Objections were raised on the ground that the draft resolution could not be considered as pertaining to procedure since it enjoined the Interim Committee to initiate studies on the substance of the question and, if necessary, to establish a special committee of inquiry; the vote must therefore be taken in accordance with the rules governing substantive proposals. The President offered to rule on the matter after the vote, at which point his ruling could be challenged. The draft resolution was rejected by a majority of the Members. There was therefore no occasion for a formal ruling by the President.

C. OTHER CASES IN WHICH THE GENERAL ASSEMBLY HAS ADOPTED
RESOLUTIONS BY A MAJORITY VOTE

148. Inasmuch as it has been the practice of the Assembly, when voting, to refer only exceptionally to Article 18, -- and then primarily to paragraph 2, -- there is little evidence of the type of decision, in other than strictly procedural matters, which constitutes an application of paragraph 3. While it is true that many decisions made by two thirds or more of the Members may not have been regarded as "important", only those resolutions which were adopted by a majority vote represent a clear indication of the Assembly's intention. They are 12 in number.

- (1) Amendments to the Provisional Rules of Procedure - resolution 17 (I) (rules 33, 33 A, 73 and supplementary rule T);
- (2) Request of the World Federation of Trade Unions for a closer connexion with the Economic and Social Council - resolution 49 B (I);
- (3) Place of meeting of the third regular session of the General Assembly - resolution 184 (II);
- (4) Proposal for the adoption of Spanish as one of the working languages of the General Assembly - resolution 247 (III);
- (5) Place of meeting of the sixth regular session of the General Assembly - resolution 497 (V);
- (6) Place of meeting of the sixth regular session of the General Assembly - resolution 499 (V);
- (7) Financing of economic development of under-developed countries - resolution 520 A (VI);
- (8) Preparation of two Draft International Covenants on Human Rights - resolution 543 (VI);
- (9) Reservations to multilateral conventions - resolution 598 (VI);
- (10) Convention on the International Right of Correction - resolution 630 (VII);

113/ G A (III/2), Plen., 219th mtg., pp. 607 and 608, relevant statement by USSR.

(11) Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government - resolution 742 (VIII); 114/

(12) Cessation of the transmission of information under Article 73 e of the Charter in respect of Puerto Rico -- resolution 748 (VIII). 114/

114/ See II.C.I.b(v), above.

ARTICLE 19

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TEXT OF ARTICLE 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

NOTE ON ARTICLE 19

1. The General Assembly, in establishing the Committee on Contributions, an expert committee, prescribed that the Committee's functions should include advising it "on the action to be taken with regard to the application of Article 19 of the Charter". 1/
2. In compliance with this directive, the Committee on Contributions has considered at each of its sessions a report by the Secretary-General on the collection of contributions which included a detailed statement of the amounts due from each Member State in respect of its financial contributions to the Organization.
3. The General Assembly at its fifth session adopted financial regulation 5.4 2/ to serve as a guide to action to be taken with regard to the application of Article 19 of the Charter.
4. This regulation provides that:

"Contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Secretary-General referred to in regulation 5.3 3/ above, or as of the first day of the financial year to which they relate, whichever is the later. As of 1 January of the following financial year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears."

5. During the discussion that took place in the Fifth Committee concerning regulation 5.4, one representative raised the question whether the regulation as finally adopted would not give rise to certain difficulties, since the financial year did not begin on the same date in every country. 4/ Other representatives expressed

1/ Rule 161 of the rules of procedure of the General Assembly (United Nations Publication, Sales No. 1954.1.17). See also rules 159 and 160.

2/ The financial regulations were adopted by General Assembly resolution 456 (V).

3/ Regulation 5.3 reads as follows: "After the General Assembly has adopted the budget and determined the amount of the Working Capital Fund, the Secretary-General shall: (a) Transmit the relevant documents to Member States; (b) Inform Member States of their commitments in respect of annual contributions and advances to the Working Capital Fund; (c) Request them to remit their contributions and advances."

4/ G A (V), 5th Com., 257th mtg., paras. 67-75.

the view that the addition to regulation 5.4 of the second sentence which had been proposed by the Advisory Committee should serve to set at rest the concern that had been voiced in this connexion. 5/

6. In the reports made to the General Assembly each year on the collection of contributions and advances to the Working Capital Fund, in accordance with financial regulation 5.7, the Secretary-General took regulation 5.4, interpreted in the light of the discussion in the Fifth Committee to mean that no Member State would be in arrears in the payment of its contributions within the terms of Article 19 of the Charter unless the arrears equalled or exceeded the amount of the contributions due for the preceding two full years, not counting the current year. 6/ Thus, in 1955, a Member State was not in arrears within the terms of Article 19 of the Charter unless the arrears for previous years equalled or exceeded the contributions due for 1953 and 1954, since the contributions for 1955 would not be considered to be in arrears within the terms of Article 19 until 1 January 1956.

7. On the basis of the status of the contributions at the time of its meetings, usually August of each year, the Committee on Contributions reported annually to the General Assembly that no action was required by the General Assembly in respect of the application of Article 19, 1/ and consequently no such action has been taken by the General Assembly.

5/ Ibid.

6/ See, for example, the report of the Secretary-General on this matter submitted to the General Assembly at its ninth session (A/C.5/588, pp. 4-6).

7/ G A (III/1), Annexes, p. 94, A/628, para. 30; G A (IV), 5th Com., Annex, p. 123, A/954, para. 21; G A (V), Suppl. No. 13 (A/1330), para. 35; G A (VII), Suppl. No. 10 (A/2161), para. 33; G A (VIII), Suppl. No. 10 (A/2461), para. 29; G A (IX), Suppl. No. 10 (A/2716), para. 38.

ARTICLE 20

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TEXT OF ARTICLE 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

INTRODUCTORY NOTE

1. The study of Article 20, which provides for regular and special sessions of the General Assembly, has been organized according to the Charter distinction between the two types of session.
2. Thus, II.A deals with procedural questions which have arisen in connexion with the holding and organization of regular annual sessions. These questions concern mainly: the opening date, the duration, the place of meeting and the temporary adjournment of the sessions; related problems have been considered and discussed at one or more of the eight regular sessions.
3. Special sessions of the General Assembly are taken up in II.B which deals first with the action of the Assembly regarding requests for the convocation of special sessions in accordance with the terms of Article 20, and secondly with the decision of the Assembly to provide for the convocation of emergency special sessions, under the terms of resolution 377 A (V), "Uniting for peace".

I. GENERAL SURVEY

4. The General Assembly has met in regular annual session each year since it was first convened in London in January 1946.
5. The first and third regular sessions were divided into two parts, with intervals of eight and four months respectively. The fifth session met from September to mid-December 1950 and was extended for ten months in the following year, having held four meetings in the interval between 1 February and 5 November, when it closed. The meetings of the seventh session were suspended in December 1952 and resumed in February 1953, recessed again in April and resumed once more in August for a period of ten days before the session closed. The eighth session recessed in December 1953 and met again on 20 September 1954 merely to close the session.
6. In addition to the regular annual sessions, the Assembly has held two special sessions on Palestine: one in April 1947 at the request of a Member, with the concurrence of the majority, and another in the same month of the following year at the request of the Security Council. The request submitted in June 1952 by a group of Members for the summoning of a special session to give urgent consideration to the situation in Tunisia failed to obtain the concurrence of the required majority within the thirty-day time-limit provided for in the rules of procedure of the General Assembly.

7. The Assembly has not met in emergency special session nor has a request been made that one should be convened.

8. A table of the opening and closing dates of the eight regular and two special sessions and their approximate duration follows.

	<u>Opening date</u>	<u>Closing date</u>	<u>Approximate duration</u>
First session, part 1	10 January 1946	14 February 1946	5 weeks
First session, part 2	23 October 1946	16 December 1946	8 weeks
First special session	28 April 1947	15 May 1947	3 weeks
Second session	16 September 1947	29 November 1947	10-1/2 weeks
Second special session	16 April 1948	14 May 1948	4 weeks
Third session, part 1	21 September 1948	12 December 1948	12 weeks
Third session, part 2	5 April 1949	18 May 1949	6 weeks
Fourth session	20 September 1949	10 December 1949	12 weeks
Fifth session	19 September 1950	15 December 1950	13 weeks
Fifth session continued ...	3 January 1951	5 November 1951 a/	26 working days
Sixth session	6 November 1951	5 February 1952	13 weeks
Seventh session	14 October 1952	22 December 1952	10 weeks
Seventh session resumed ...	24 February 1953	23 April 1953	8-1/2 weeks
Seventh session resumed ...	17 August 1953	28 August 1953	2 weeks
Eighth session	15 September 1953	9 December 1953 b/	12 weeks (recessed)

a/ G A (V), 1st Com., vol. II, 419th mtg.

b/ See para. 5 above.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Regular Annual Sessions

1. Date of meeting

9. Rule 1 of the rules of procedure of the General Assembly gives effect to Article 20 and provides:

"The General Assembly shall meet every year in regular session commencing on the third Tuesday in September". 1/

Rule 5 provides that the Secretary-General shall notify the Members of the United Nations, at least sixty days in advance, of the opening of a regular session.

1/ The rule recommended by the Executive Committee of the Preparatory Commission, which fixed the opening date at the first Tuesday after 2 September (Report of the Preparatory Commission of the United Nations, PC/20, p. 8, section 3), was amended during the second session (G A resolution 175 (II)). The numbers of the rules given in this text are those appearing in Rules of Procedure of the General Assembly (embodying amendments adopted by the General Assembly up to and including its eighth session) July 1954, A/520/Rev.3.

a. POSTPONEMENT OF OPENING DATE

10. The rules of procedure do not specifically provide for a postponement of the opening date of regular sessions as established in rule 1. On three occasions, however, the Assembly altered that date, without either amending the text of the rule or suspending its application.

11. On one occasion it did so by resolution; on another, the action was initiated by the President of the General Assembly; and on the third, the action was initiated by the Secretary-General.

1. By resolution of the General Assembly

12. During the fifth regular session, the Assembly decided to convene the sixth session in Europe. 2/ At a subsequent meeting, it was decided that the session should be held in Paris and that notwithstanding the provisions of rule 1 of the rules of procedure it should "commence not later than 6 November 1951". 3/

ii. By consultation of Members at the initiative of the President

13. By cablegram dated 9 September 1946, the Secretary-General transmitted to the Members the text of a communication which he had received from the President requesting him, on behalf of a group of Members, to consult with Governments as to whether, in view of the difficulties which would arise if the Assembly were to meet concurrently with the Paris Conference then in progress, it would not be desirable to postpone the opening date of the second part of the first session until 23 October. In his cablegram, the Secretary-General endorsed the suggestion and requested a reply from the Governments not later than 13 September. On that date, the Secretary-General sent a further communication 4/ advising Members that forty-seven replies expressing concurrence had been received and that no objection had been raised. The second part of the first session was, therefore, convened for 23 October and opened on that date.

14. One Member informed the Secretary-General, by letter, that it would abide by the decision of the majority regarding the postponement but wished to state that, in its view, it was not a proper procedure to modify a resolution of the General Assembly 5/ by means of separate consultation with Members; it was hoped that this action would not constitute a precedent for modifying either the decisions or rules of procedure of organs of the United Nations in the future. The Secretary-General replied that the decision to postpone the opening date had been taken only in view of special circumstances and would not establish any precedent.

iii. By consultation of Members at the initiative of the Secretary-General

15. By note verbale dated 29 May 1952, the Secretary-General brought to the attention of Members certain practical considerations which, he stated, might have a bearing on the opening date of the seventh regular session. The Secretary-General pointed out that under rule 1 of the rules of procedure the normal date would fall on 15 September and he noted that many delegations at the Permanent Headquarters had been

2/ G A resolution 497 (V).

3/ G A resolution 499 (V).

4/ G A (I/2), Plan., p. XII, Telegram of Convocation.

5/ G A resolution 29 (I).

considering a postponement of a few weeks. In this connexion, he observed that the completion of the new building for the General Assembly could be carried out more economically and the material arrangements organized with greater convenience for delegations if a few weeks additional time were allowed and pointed out that the closing of the sixth session in February of the same year had shortened the working period between sessions. Making use of the procedures of consultation with Members provided for in the rules of procedure, the Secretary-General, therefore, proposed that the seventh session should be convened on 14 October 1952.

16. No objections were raised to the Secretary-General's proposal. However, some Members, while accepting the suggestion for the reasons given above, indicated that they would have preferred to observe the provisions of rule 1, and to convene at the normal time. One Member added that it wished to make "all reservations as to the interpretation of the rules of procedure followed by the Secretary-General", which it believed could not constitute a precedent.

b. CHANGE IN OPENING DATE

17. The possibility of a permanent change in the opening date of the regular sessions was first suggested by the Secretary-General in his memorandum concerning measures to limit the duration of regular sessions, 6/ which was considered during the seventh session of the General Assembly. The memorandum pointed out that the opening of that session had been postponed until 14 October and suggested that if the Assembly should manage to complete its business by the third week in December it might determine, in the light of its experience during the session, whether a permanent change in the opening date would be desirable. 7/

18. Later in the session, the question was raised again in the General Committee 8/ in connexion with the progress and organization of the work of the Assembly. At that time, a draft resolution 9/ was submitted which proposed that rule 1 of the rules of procedure should be amended so as to provide that regular sessions should commence on the third Tuesday in April. As a consequence of the discussions on this subject, the General Committee recommended the adoption of a draft resolution which would call upon the Secretary-General to prepare a report "on the practical consequences of a change in the opening date of regular sessions from the third Tuesday in September to another date earlier or later in the year". 10/

19. During the eighth session, 11/ the item was referred to the Fifth Committee where the reports 12/ of the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions were considered.

6/ G A (VII), Annexes a.i.50, pp. 2-7, A/2206, paras. 48 and 49.

7/ In view of the decision of the Assembly to refer the Secretary-General's memorandum to a special committee for consideration, this particular suggestion was not pursued further nor, subsequently, did the special committee make any recommendation in this regard.

8/ G A (VII), General Com., 83rd and 84th mtgs., pp. 19-26.

9/ G A (VII), Annexes, a.i.1, p. 15, A/BUR/131, draft resolution submitted by Canada, Chile, Greece and Thailand.

10/ G A (VII), Annexes, a.i.7, p. 16, A/2329. The draft resolution recommended by the General Committee was adopted as resolution 692 (VII) by the General Assembly at its 406th plenary meeting (p. 418).

11/ G A (VIII), Plen., 435th mtg., p. 33.

12/ G A (VIII), Annexes, a.i.52, pp. 1-4, A/2436, A/2553.

20. In his report, the Secretary-General stated that it seemed probable that an opening date during the first half of the year would reduce the risk of postponements followed by a disruption of the work of the Assembly. Pointing out that to fix the opening date in the middle of the calendar year would place the period of most intensive preparatory activity at a time when many members both of delegations and the Secretariat would be absent from the United Nations Headquarters, he took 20 April as a convenient date between the beginning of the year and the early summer months. He outlined the effect of such a change on (1) the pattern of conferences, particularly with regard to the Economic and Social Council and its functional commissions and (2) the financial arrangements of the United Nations with particular regard to the budget, the report of the Board of Auditors, the contribution of Members and the Working Capital Fund; his report included a review of the situation if the period of the financial year were unchanged and of the situation if the year were changed to 1 July - 30 June.

21. The Advisory Committee considered the Secretary-General's report, agreed with the views expressed therein and, noting that neither the Secretary-General nor any Member had submitted a specific proposal for a change, did not itself recommend any change.

22. Among the reasons advanced by the Committee were that for a majority of Member States there was normally more parliamentary activity during the ten-week period beginning 20 April than during the period beginning in the middle of September, and that nothing should be done to enhance the difficulties already confronting Members in the matter of high level representation at Assembly sessions; that the period in question would cover three major groups of meetings, namely, those of the United Nations itself, the World Health Organization and the International Labour Organisation, which might inconvenience treasuries and other government departments; that such a change would call for large-scale readjustment of the conference programme; and that account had to be taken of its effect on the financial arrangements of the United Nations. Attention was drawn to the serious drawbacks or risks foreseen in the Secretary-General's report.

23. While recommending that the existing provision in the rules of procedure concerning the opening date of regular sessions should be maintained, the Committee suggested that a deferment, possibly by two weeks until the first Tuesday in October, might be considered in order to afford more time for preparatory work for the session and in particular for the drafting and printing of the annual report of the Economic and Social Council.

24. There was general agreement ^{13/} in the Fifth Committee with the observations made by the Advisory Committee. One proposal recommending that the opening date of the ninth session should be deferred until the first Tuesday in October, as an experimental measure, and another proposal recommending that it should be deferred until the fourth Tuesday in September, were rejected.

25. The General Assembly unanimously adopted ^{14/} the recommendation of the Fifth Committee that the existing provision in rule 1 of the rules of procedure should be maintained.

^{13/} G A (VIII), 5th Com., 405th mtg., pp. 168-170.

^{14/} G A (VIII), Plen., 471st mtg., p. 458; G A resolution 783 (VIII).

2. Adjournment and resumption of session

26. Rule 6 of the rules of procedure of the General Assembly provides that: "The General Assembly may decide at any session to adjourn temporarily and resume its meetings at a later date."

27. From the table contained in paragraph 8 above, relating to the duration of the sessions, it is clear that only the second and fourth regular sessions and the two special sessions of the General Assembly opened and closed without a temporary adjournment.

28. In reconvening a session which it had temporarily adjourned, the General Assembly has either fixed the date of reconvening at the time the decision to recess was taken, 15/ or it has established by resolution specific conditions to be met before the meetings were resumed, and has not fixed the date in advance. 16/

29. The discretionary power granted to the President for the reconvening of a session has varied, particularly with respect to the resumption of meetings in connexion with the Korean question, and has been discussed on two occasions.

30. During the seventh session, the Assembly adopted a recommendation 17/ submitted by the General Committee which provided: "that meetings of the seventh regular session of the General Assembly should be suspended not later than 23 December 1952, to be resumed on 24 February 1953 or at an earlier date on the call of the President".

31. Objections were raised both in the General Committee and in plenary meeting 18/ to the words "or at an earlier date on the call of the President". It was maintained that there was no reason why a final decision should not be taken on a fixed date and that the Members should have at least two months notice of the resumption of meetings; if any emergency should arise, the rules of procedure provided for the calling of a special session. Moreover, it was pointed out, the General Assembly itself and not a single individual, even its President, should decide such questions.

32. In reply to these objections, it was argued 19/ that a procedural problem was involved; although a session could be convened in accordance with the rules of procedure to deal with an emergency, it could not be called to deal with an item still on the agenda of an unfinished session. The proposal in question provided a safeguard for an orderly conduct of the Assembly's business and there was no danger that the President would use his power to reconvene the Assembly at an earlier date unless it was absolutely necessary.

33. The seventh session reconvened on 24 February and recessed again on 23 April. On that day the Assembly requested 20/ the President to reconvene the session to resume consideration of the Korean question under one of two conditions:

15/ G A resolutions 29 (I) and 263 (III).

16/ G A resolutions 705 (VII) and 716 (VIII).

17/ G A (VII), Annexes, a.i.7, p. 16, A/2329.

18/ G A (VII), Plen., 406th mtg., pp. 417 and 418; General Com., 84th mtg., pp. 23 and 24; relevant statements by Czechoslovakia and USSR in General Committee and USSR in plenary meeting.

19/ Relevant statements by Argentina, Philippines and United States in General Committee.

20/ G A resolution 705 (VII). On 26 July 1953, the President informed Members that an Armistice Agreement had been signed and that the session would reconvene on 17 August 1953. The seventh session closed on 28 August.

"(a) upon notification by the Unified Command to the Security Council of the signing of an armistice agreement in Korea; or (b) when, in the view of a majority of Members, other developments in Korea require consideration of this question."

34. During the eighth session, the procedure to be followed in reconvening the session was discussed in the First Committee. 21/ Two draft resolutions 22/ were submitted on the question. The first provided that the Assembly should resolve to stand recessed on or after 8 December 1953 to 9 February 1954, although the President might, for good and sound reasons, convene the Assembly on an earlier or later date for the further consideration of the Korean question. The second draft resolution provided that the Assembly would (1) defer consideration of the Korean question and (2) request the President to reconvene the session whenever in the opinion of a majority of Members developments with regard to any aspect of this question required consideration.

35. The draft resolutions were withdrawn by the sponsors and a revised joint text 23/ was submitted by them as follows:

"The General Assembly

"1. Resolves that the eighth session of the General Assembly stand recessed;

"2. Requests the President of the General Assembly to reconvene the eighth session, with the concurrence of the majority of Member States, if (a) in her opinion developments in respect of the Korean question warrant such reconvening, or (b) one or more Member States make a request to the President for such reconvening by reason of developments in respect of the Korean question."

36. An amendment 24/ to delete the phrase "with the concurrence of the majority of Member States" was submitted on the ground that this requirement was based on the rule 25/ relating to the calling of special sessions, which did not apply to the resumption of meetings of a regular session. It was alleged 26/ that the draft resolution placed difficulties in the way of reconvening the session because the concurrence of Members would have to be secured before any action was taken. It was not merely consultation that was provided for, in which case the President would have the possibility of overriding the majority; it was a mandatory clause. It was pointed out that, while, in general, the views of the majority were very important, the polling of sixty Members could cause a serious delay and the Assembly would do well to trust the wisdom of the President on this matter. The proposed amendment would facilitate the reconvening of the session and would bring the text closer to the provisions of rule 6 of the rules of procedure which dealt with temporary adjournment and left the resumption of meetings less obligatory and not conditional upon a

21/ G A (VIII), 1st Com., 682nd mtg., pp. 297-304.

22/ G A (VIII), Annexes, a.i.18, pp. 1 and 2, draft resolutions submitted by India (A/C.1/L.94/Rev.1) and Brazil (A/C.1/L.95).

23/ G A (VIII), Annexes, a.i.18, p. 2, A/C.1/L.96.

24/ G A (VIII), 1st Com., 682nd mtg., p. 297, para. 4, amendment submitted by Poland (A/C.1/L.97).

25/ See rule 9 of the rules of procedure.

26/ G A (VIII), 1st Com., 682nd mtg., pp. 297-304, statements by Poland and USSR.

majority decision. It was further pointed out that the nature of the "developments", referred to in the draft resolution as the basis for reconvening the session, was undefined; each Member would be free to interpret the significance of developments in its own way and this was not only a complicated but a dangerous procedure.

37. On the other hand, some Members 27/ felt that the amendment would make the joint draft resolution very similar to the first proposal which they believed to be a serious departure from precedent. Moreover, under the terms of the amendment, the request of a single Member would make it obligatory to reconvene even though that might be contrary to the wishes of the majority. It was observed, furthermore, that the resolution, as it stood, granted the President effective power of initiative in that he could suggest that the session should reconvene and it would be unlikely that concurrence would be denied. As regards the procedure for ascertaining the views of Members, it was maintained that, inasmuch as most Members had permanent representatives in New York, the President could easily communicate with them and they, in turn, could on short notice present their Governments' position.

38. The amendment was rejected in the Committee. The joint draft resolution, as quoted above, was adopted by the General Assembly. 28/

Determination of the "concurrence" of Members

39. On 11 January 1954, the Secretary-General, at the request of the President of the General Assembly, transmitted to Members 29/ the text of a communication from the President which stated that: (1) the Government of India had requested that the eighth session should be reconvened, in accordance with the terms of General Assembly resolution 716 (VIII); (2) in the considered judgment of the President, the request was warranted by the "developments in respect of the Korean question"; (3) the President considered 9 February as an appropriate date; and (4) Members were requested to concur with the President's initiative.

40. The communication further requested that, in view of the limited time available, replies from Governments should be communicated to the Secretary-General as early as possible and, in any event, prior to 22 January. In conclusion, the President stated that "if, for any reason your reply is not received by that date, I shall venture to presume your concurrence with the initiative I have taken".

41. A number of Members expressed reservations with regard to the course proposed by the President; a Government's position on the question could not be presumed from its failure to reply within the time limit since such a course would be contrary to the rules of procedure of the General Assembly and to all precedent. Moreover, in view of the terms and history of the Assembly decision on the matter and uniform practice in the United Nations, the express concurrence of a majority of Members was required in order to reconvene the session.

42. As a result of these representations and after consultation with the President, the Secretary-General informed all the Members that it had been agreed that a one-week extension should be given for the receipt of their replies. The Secretary-General further stated that the extension of time "reduces the importance of the definition of concurrence" and added that he was nevertheless authorized to state that "Members not

27/ G A (VIII), 1st Com., 682nd mtg., pp. 297-304, relevant statements by France, Peru, United Kingdom.

28/ G A resolution 716 (VIII).

29/ See A/2635.

replying will not be regarded as concurring in the request for reconvening the General Assembly on 9 February 1954". 30/

3. Place of meeting

43. Rule 3 of the rules of procedure provides that:

"Sessions shall be held at the Headquarters of the United Nations unless convened elsewhere in pursuance of a decision of the General Assembly at a previous session or at the request of a majority of the Members of the United Nations."

44. Two regular sessions have been convened away from the Headquarters of the United Nations pursuant to decisions of the General Assembly.

45. During the second session, the Assembly decided 31/ that the third session should be convened in Europe and requested the Secretary-General, in consultation with a committee of nine members to be designated by the President of the General Assembly, to choose the city where it should be held.

46. After considering invitations from various Governments, the Committee advised the Secretary-General that Paris was the most suitable site.

47. The necessary arrangements were concluded by the Secretary-General with the French Government and, on 23 July 1948, the Members were informed that the session would convene in Paris on 21 September.

48. During the fifth session, the Assembly decided 32/ to convene the sixth session in Europe and instructed the President of the General Assembly and the Secretary-General to select the most suitable city and to make the necessary arrangements.

49. On 17 March 1951, the Secretary-General communicated to Members the text 33/ of a letter which he had received from the Acting Representative of France stating that the French Government would welcome the General Assembly to Paris for the duration of its sixth session, but it would be unable to receive the Assembly before 6 November.

50. By resolution 499 (V), the Assembly took note of this information and decided that the session should meet in Paris, to commence not later than 6 November 1951. The Secretary-General was authorized to conclude the agreements "provided that the total estimated cost of holding the sixth session in Paris (including such meetings as may be arranged after 1 January 1952) shall not exceed the amount of \$US2,350,400 provided in the 1951 budget, plus such additional amounts as may be authorized by transfer from other sections of the 1951 budget by the Secretary-General with the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions".

30/ On 29 January, the final date, the Secretary-General informed the Members that the number in favour of reconvening the eighth session had been twenty-two, which was less than the required majority.

31/ G A resolution 184 (II), adopted at the 114th plenary meeting, pp. 940-941.

32/ G A resolution 497 (V), adopted at the 324th plenary meeting, p. 663.

33/ G A (V), Annexes, place of meeting of the sixth session of the General Assembly, pp. 6 and 7, A/1788/Rev.1.

51. Following negotiations between the Secretary-General and the French Government, the Members were notified that facilities would be available in time to permit the opening of the session on 6 November.

4. Duration of session

52. The question of the duration of regular sessions has been a subject of discussion at four regular sessions. ^{34/} On each occasion, the debate has revolved around amendments which had been proposed to the rules of procedure and proposals concerning the methods and practices of the General Assembly in connexion with the organization of its work and the conduct of its business.

53. The principal factors cited as contributing to the length of the sessions relate to the establishment of the agenda, the consideration by the Assembly of the annual reports of the Economic and Social Council and the Trusteeship Council and the practices which have developed in the debates of the Main Committees. As regards measures which might be taken to limit the duration of sessions, in addition to specific amendments to the rules of procedure, suggestions have been made concerning: the consideration of items in plenary meeting without reference to committee, the consideration of items between sessions, the schedule of meetings of Main Committees during the sessions, and other related matters of internal organization. ^{35/}

54. The discussion of this question in the General Assembly has been based on reports submitted either by the Secretary-General or by special committees established by the Assembly. Each succeeding report has pointed out that the length of sessions has been determined mainly by the number and complexity of the proposals brought before the General Assembly and that the co-operation and restraint of Members would contribute as much to a curtailment of sessions as would the application of rigid measures or extensive amendments to the rules of procedure, which might infringe on the functions of the Assembly and limit the rights of individual Members. In the main, two opposing views have characterized the debates on this subject. ^{36/} Some Members have felt that it was in the general interest for the Assembly to adopt positive measures which would effectively shorten the sessions without, however, jeopardizing the work of the Assembly, and have urged that the following practical considerations should be kept in mind, lengthy sessions imposed additional financial burdens on Governments and raised difficulties in connexion with the composition of their delegations. Other Members have resisted steps in this direction because they felt that the measures contemplated would have the effect of impairing the absolute right of each State to express fully its views on any of the items on the agenda of a session; the Assembly was composed of sovereign and equal States and its deliberations as the world forum should not be restricted in any way.

^{34/} G A (III/2), Plen., 201st mtg., pp. 223-225; G A (IV), Plen., 235th and 236th mtgs., pp. 151-166; G A (VII), Plen., 387th and 388th mtgs., pp. 135-162, 410th mtg., p. 480; G A (VIII), Plen., 453rd mtg., p. 249.

^{35/} G A (IV), Suppl. No. 12 (A/937); G A (VII), Annexes, a.i.50, pp. 2-7, A/2206; G A (VIII), Annexes, a.i.54, pp. 2-7, A/2402.

^{36/} See G A (VIII), 6th Com., 360th-366th mtgs., pp. 5-36, relevant statements by Canada, Denmark, Greece, Netherlands, New Zealand, Norway, Union of South Africa, United Kingdom, United States, on the one hand, and statements by Argentina, Byelorussian SSR, Czechoslovakia, Iraq, India, Lebanon, Pakistan, Panama, Peru, Poland, Ukrainian SSR, USSR, Uruguay and Yugoslavia, on the other.

Closing date of session

55. During the fourth session, the General Assembly adopted the recommendation of the Special Committee on Methods and Procedures of the General Assembly 37/ to include a new rule in the rules of procedure, as follows:

"On the recommendation of the General Committee the General Assembly shall, at the beginning of each session, fix a target date for the closing of the session."

56. In recommending a target date, the Special Committee stated that it had not wished to adopt proposals which would limit the duration of the sessions in a more rigid manner, although it pointed out that in order to enable Governments to ensure adequate representation, regular sessions should not exceed eight weeks. The Committee's proposal was intended to render permanent and to strengthen the practice of fixing a closing date which would be a target for the Assembly.

57. During the seventh session, the question was considered again in the General Assembly in connexion with a memorandum 38/ submitted by the Secretary-General under the item "Measures to limit the duration of regular sessions of the General Assembly". The memorandum was based on extensive oral consultations with representatives at Headquarters and made certain suggestions relating to procedure, organization and method of work designed to increase the effectiveness of the sessions and to limit their duration. The Secretary-General felt, however, that to set a fixed period for the duration of sessions would impose a clear-cut limitation on the General Assembly and might infringe on the Assembly's functions. While of the opinion that the Assembly should strive to accomplish its work during a period of approximately eight weeks, the Secretary-General was unwilling to make any specific recommendation to that effect.

58. Following a general debate on the question in plenary meeting, 39/ the Sixth Committee was requested to consider the proposed amendments to the rules of procedure which were annexed to the Secretary-General's memorandum, as well as any other amendments proposed by members of the Committee.

59. In the course of the discussion 40/ a draft resolution 41/ was submitted to amend rule 2 of the rules of procedure, as follows:

"On the recommendation of the General Committee, the General Assembly shall, at the beginning of each session, fix a closing date for the session.

"The duration of any regular session shall not exceed six weeks. Any items still pending at the close of the session shall be referred to the next regular session."

60. The representatives opposing the draft resolution 42/ felt that it was impossible to decide in advance that the duration of sessions should invariably be six

37/ G A (IV), Suppl. No. 12 (A/937).

38/ G A (VII), Annexes, a.i.50, pp. 2-7, A/2206.

39/ G A (VII), Plen., 387th and 388th mtgs., pp. 135-162.

40/ G A (VII), 6th Com., 346th-354th mtgs., pp. 233-275.

41/ G A (VII), Annexes, a.i.50, p. 11, A/C.6/L.279, draft resolution submitted by Argentina.

42/ See for example relevant statements by Afghanistan, Australia, Belgium, Brazil, Canada, Colombia, India, USSR, United Kingdom, United States, Yugoslavia.

weeks. They contended that in some cases continued debate was essential and the proposal would lead to limitations endangering freedom of speech in the General Assembly. The draft resolution, these representatives held, emphasized the time factor at the expense of the consideration of the importance of the items to be discussed. Moreover, the suggestion that items not disposed of at a given session should be referred to the next session could lead to repeated postponements in the discussion of "embarrassing" questions.

61. An amendment ^{43/} to the draft resolution was submitted which eliminated the reference to a fixed period for the duration of sessions. The effect of the amendment, it was explained, would be to delete the word "target" from rule 2 of the rules of procedure. Henceforth, the Assembly would fix a definite date for the closing of the session which it could change later if it appeared advisable in the light of the debates. This, it was maintained, was a flexible solution which would make it possible to calculate the duration of sessions on a firmer basis and would leave open the controversial question of the procedure to be followed with respect to items which were not to be dealt with during the session. The amendment was accepted by the sponsor of the draft resolution.

62. On the recommendation of the Sixth Committee the Assembly adopted two resolutions, ^{44/} the second of which provided that rule 2 of the rules of procedure should be amended to read:

"On the recommendation of the General Committee, the General Assembly shall, at the beginning of each session, fix a closing date for the session."

B. Special Sessions

1. Procedure for summoning

63. Article 20 of the Charter provides that "Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations" and rule 7 of the rules of procedure provides that "The General Assembly may fix a date for a special session".

a. BY THE GENERAL ASSEMBLY

64. No special sessions have been called by a decision of the General Assembly taken at a previous session.

b. AT THE REQUEST OF THE SECURITY COUNCIL

65. Rule 8 of the rules of procedure provides that "Special sessions ... shall be held within fifteen days of the receipt by the Secretary-General of a request for such a session from the Security Council,".

66. On 1 April 1948, the Security Council adopted a resolution ^{45/} which requested the Secretary-General, "in accordance with Article 20 of the United Nations Charter, to

^{43/} G A (VII), Annexes, a.i.50, p. 11, A/C.6/L.281, amendment submitted by Belgium.

^{44/} G A resolutions 689 A and B (VII), adopted at the 410th plenary meeting (G A (VII)), Plen., p. 480).

^{45/} S C, 3rd yr., Suppl. for April 1948, pp. 4 and 5, S/714, II.

convoke a special session of the General Assembly to consider further the question of the future government of Palestine". On the same day, the Secretary-General informed all the Members of the Council's decision and notified them that the special session would open on 16 April.

C. AT THE REQUEST OF MEMBERS

67. Rule 9 of the rules of procedure provides:

"(a) Any Member of the United Nations may request the Secretary-General to summon a special session. The Secretary-General shall immediately inform the other Members of the United Nations of the request and inquire whether they concur in it. If within thirty days of the date of the communication of the Secretary-General a majority of the Members concur in the request, a special session of the General Assembly shall be summoned in accordance with rule 8".

68. On 2 April 1947, the United Kingdom requested ^{46/} the Acting Secretary-General to summon a special session in connexion with the consideration of the question of Palestine (at the second regular session of the General Assembly). The Acting Secretary-General transmitted the United Kingdom request to the other Members and asked that he be notified whether the Governments concurred. On the day that a majority had signified its concurrence, the Secretary-General informed the Members that a special session would be convened. ^{47/}

69. The same procedure of consultation was followed in June 1952 upon receipt by the Secretary-General of a request ^{48/} by a group of Members that a special session should be summoned to give urgent consideration to the situation in Tunisia. At the expiration of the thirty-day period provided for in the rules of procedure, the Secretary-General notified the Members that the number of replies received signifying concurrence in the request had been less than the majority required for the summoning of the session. ^{49/}

2. *Emergency special sessions*

Resolution 377 A (V), "Uniting for peace"

70. Article 20 of the Charter provides for regular annual sessions of the General Assembly and for the convocation of special sessions. During its fifth session, the Assembly decided to provide for the convocation of emergency special sessions as well, and amended the rules of procedure accordingly.

^{46/} G A (S.I.), Plen., p. 183, Annex 1, (A/286).

^{47/} See A/295 and Corr.1.

^{48/} A/2137.

^{49/} See A/2143.

71. The decision arose out of the consideration 50/ of the item "United action for peace". 51/ A joint draft resolution 52/ was submitted in the First Committee dealing specifically with four types of action which the Assembly might take in connexion with the maintenance of international peace and security. Section A of the draft resolution stated as follows:

"1. Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including when necessary the use of armed force, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by seven members of the Security Council".

72. Doubts were expressed regarding the method envisaged for the calling of an emergency special session; it was felt that action by members of the Security Council taken without an actual vote in the Council itself might be incompatible with the terms of Article 20. A revised draft 53/ was then submitted by the sponsors which modified the procedure, providing that:

"Such emergency special session shall be called if requested by the Security Council on the vote of any seven members or by a majority of the Members of the United Nations;"

73. Other Members, however, objected to this text, as they had done to the first, on the grounds that the Charter did not permit a decision to convoke a special session to be made by any seven members of the Council; it must be a decision of the Council as legally constituted, which required the concurring votes of the five permanent members. Special sessions could be called at the request of the Council and a decision to this effect must be regarded as non-procedural, under Article 27 (3), since a special session would presumably be called for the purpose of putting on its agenda matters which originally had been considered by the Council. The question of constitutional competence to act would therefore be involved, as stated in the last sentence of Article 11 (2). The Assembly would be concerning itself with matters relating to international peace and security which would necessitate a decision of the Council taken by seven affirmative votes, including the concurring votes of the five permanent members. Furthermore, it was obviously for the Security Council itself and not for

50/ G A (V), 1st Com., 354th-371st mtgs., pp. 63-174, see, for example, statements by Australia (p. 125, paras. 27-28, p. 134, para. 61), Byelorussian SSR (p. 106, para. 54, p. 136, para. 14), Czechoslovakia (p. 99, para. 43, p. 131, para. 26), Ecuador (p. 87, para. 2), France (pp. 130-131, paras. 21-22), Iraq (p. 135, para. 2), Israel (p. 116, para. 9, p. 125, para. 26), Netherlands (p. 80, para. 12), Pakistan (p. 127, para. 50), Poland (p. 126, para. 33), Syria (p. 97, para. 20, p. 131, para. 32), Ukrainian SSR (p. 103, para. 20, p. 125, para. 23), Union of South Africa (p. 109, para. 18, p. 137, para. 24), USSR (p. 85, para. 42, pp. 132-133, para. 47), United Kingdom (p. 130, para. 17), United States (p. 117, para. 23, p. 124, paras. 15 and 17), Uruguay (p. 70, para. 11).

51/ See also in this Repertory under Article 11.

52/ G A (V), Annexes, a.i.68, pp. 4-6, A/C.1/576, draft resolution submitted by

Canada, France, Philippines, Turkey, United Kingdom, United States and Uruguay.

53/ G A (V), Annexes, a.i.68, pp. 6-8, A/C.1/576/Rev.1.

the General Assembly to decide whether the question was one of substance or procedure; the draft resolution prejudged the Council's right to decide the matter. It was also argued that Article 18 of the Charter required that decisions of the Assembly on important questions should be made by a two-thirds majority; a decision relating to a threat to or a breach of the peace undoubtedly dealt with an important question and should be made by a two-thirds majority of the Members. To provide that a simple majority could properly be authorized to convene a special session would therefore be a violation of Article 18.

74. As against this interpretation, it was pointed out that Articles 20, 21 and 22 appeared in the Charter under the heading "Procedure" and that the Charter provided that decisions of the Security Council on questions of procedure should be taken by the affirmative vote of any seven of its members. Moreover, by resolution 267 (III), the General Assembly had recommended to the Security Council that the request for the convening of a special session should be regarded as a question of procedure. It was obvious that the Assembly could decide for itself on its own procedure. Although Article 20 concerned a case in which the Security Council might request the General Assembly to hold a special session, it was nevertheless true that the Assembly could decide at its discretion respecting those cases in which it would hold a special session. In addition, it was stated, if the Council were unable to take prompt action owing to a lack of unanimity among its permanent members, that same lack would operate against the adoption of a substantive resolution by the Council to call a session of the Assembly. In attempting to find a way to deal with these situations, it would be illogical to insist upon unanimity before the Assembly could be summoned to act.

75. The text, as revised above, was recommended by the First Committee and adopted by the General Assembly. 54/ The relevant rules of procedure were amended accordingly 55/ and a new rule, 64 A, 56/ was adopted, as follows:

"Notwithstanding the provisions of any other rule and unless the General Assembly decides otherwise, the Assembly, in case of an emergency special session, shall convene in plenary session only and proceed directly to consider the item proposed for consideration in the request for the holding of the session, without previous reference to the General Committee or to any other committee; the President and Vice-Presidents for such emergency special sessions shall be, respectively, the Chairmen of those delegations from which were elected the President and Vice-Presidents of the previous session."

54/ G A resolution 377 A (V), adopted at the 302nd plenary meeting, (G A (V), Plen., p. 346).

55/ See rules 8, 9, 10, 16 and 19.

56/ Now rule 65.

ARTICLE 21

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TEXT OF ARTICLE 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

INTRODUCTORY NOTE

1. At each of its regular sessions, the General Assembly has amended or considered questions bearing on the revision of its rules of procedure. Certain general questions have emerged during its discussions, such as those of the relationship of the rules to the functions and powers of the Assembly under the Charter and the methods by which amendments to the rules should be made. These are mentioned briefly in the first section of the Analytical Summary of Practice. Since questions concerning the conformity with the Charter of proposed amendments to the rules have arisen repeatedly in connexion with various categories of rules, the reader is referred to the second section of the Analytical Summary for a description of the context in which such questions have arisen.

2. The second section of the Analytical Summary of Practice concerns some of the significant features of the rules adopted by the Assembly. Following an initial review of the general characteristics of the rules, this section presents under broad subject-headings particular categories of questions, such as those relating to the agenda (in which are included questions concerning the General Committee since the main functions of that body relate to the agenda of sessions), to some of the differences between the rules governing proceedings in plenary meeting and in committee, and to the powers of presiding officers. The rules concerning sessions, admission of new Members, elections to principal and subsidiary organs are not considered in this study, since they relate to matters specifically provided for in other Articles of the Charter; as appropriate, they have been dealt with in the studies in this Repertory relative to the application of Articles 20, 4, 23, 61, 86 and 22.

3. The third section of the Analytical Summary of Practice relates to the election of the President of the General Assembly. In addition to the question of nominations for election to that office, this section also considers questions relating to the election of Vice-Presidents, to which no specific reference is made in the Charter.

I. GENERAL SURVEY

4. The rules of procedure of the General Assembly are divided into eighteen chapters, entitled "Sessions", "Agenda", "Delegations", "Credentials", "Presidents and Vice-Presidents", "General Committee", "Secretariat", "Languages", "Records", "Public and private meetings: plenary meetings; meetings of committees and sub-committees", "Minute of silent prayer or meditation", "Plenary meetings" (conduct of business, voting), "Committees" (creation, officers, conduct of business, voting), "Admission of new Members to the United Nations", "Elections to principal organs", "Administrative and budgetary questions", "Subsidiary organs of the General Assembly" and "Interpretations and amendments".

5. The General Assembly has considered questions involving its rules at each of its first eight regular sessions. At both parts of its first session, 1/ it amended the provisional rules of procedure recommended by the Preparatory Commission. At its second session, 2/ it undertook a thorough revision of these rules, both in form and content;

G A resolutionSubjects dealt with

- 1/ 17 (I) General Committee (present rules* 41 and 43); Elections in plenary meeting (present rule 94).
 2 (I) Languages (present rules 51-59).
 15 (I) Advisory Committee on Administrative and Budgetary Questions (present rule 156); Committee on Contributions (present rule 159).
 73 (I) Committee on Contributions (present rule 160).
 77 (I) Date of regular session of General Assembly (present rule 1).
 87 (I) Terms of office of members elected to Councils (present rule 140).
 88 (I) Election of members of the International Court of Justice (present rule 152).
2/ 116 (II) Admission of new Members (present rules 135, 136, 138 and 139).
 173 (II) (a) Adoption of new rules concerning:
 Place of meeting of regular sessions (present rule 4);
 Substitute members on General Committee (present rule 39**);
 Conduct of business in plenary meetings (present rules 75, 78**, 79, 81, 82 and 83);
 Voting in plenary meetings (present rules 88, 90** and 93);
 Chairman and Absence of officers of committees (present rules 106, 107 and 108**);
 Conduct of business in committees (present rules 110**, 111, 112, 114**, 115**, 116, 117**, 118**, 119**, 120, 121, 122, 123 and 124);
 Voting in committees (present rules 125, 127, 128, 129**, 130**, 131**, 132, 133** and 134);
 Information on the cost of resolutions (present rule 155);
 Subsidiary organs (present rule 162);
 Interpretation of the rules (present rule 163);
 (b) Amendment of rules concerning: Regular and special sessions, agenda, credentials, President and Vice-Presidents, General Committee, Secretariat, languages, public and private meetings, plenary meetings, committees and elections to principal organs.

* The numbers of the rules used throughout are those of the rules of procedure of the General Assembly appearing in the edition of July 1954 (United Nations Publication, Sales No.: 1954.1.17).

** The rules marked with two asterisks were further amended subsequent to the revision indicated in the present text.

it adopted the revised rules as its rules of procedure, deciding that they should no longer be considered as provisional. At the third, 3/ fourth, 4/ fifth, 5/ seventh, 5/ and eighth sessions, 7/ the Assembly amended its rules, the amendments adopted at the fourth session being extensive. At the sixth session, it considered proposals concerning its procedures for dealing with legal and drafting questions but decided 3/ to establish a special committee to study the question further and to report at the seventh session.

6. The most extensive discussions concerning the rules of procedure have taken place in the light of studies which the Assembly called for in order to enable it to function more efficiently, economize its time and reduce the length of its sessions. Thus, a Committee on Procedures and Organization of the General Assembly was established at the second part of the first session and reported 9/ at the second session; a Special Committee on Methods and Procedures of the General Assembly was established at the second part of the third session and reported 10/ at the fourth session, and a Special Committee on Measures to Limit the Duration of Regular Sessions of the General Assembly was established at the seventh session and reported 11/ at the eighth. In addition to undertaking various studies from time to time on particular questions, the Secretary-General, upon the request of the Assembly, submitted to the Assembly at its second and seventh sessions reports 12/ concerning the general question of measures to limit the duration of sessions, and recommended certain amendments to the rules of procedure.

G A resolution

Subjects dealt with

- 3/ 262 (III) Amendments to provide for addition of Spanish to working languages of General Assembly (present rules 51-55).
- 4/ 362 (IV) (a) Adoption of new rules concerning:
 - Duration of session (present rule 2**);
 - Agenda items (present rules 20, 22 and 23);
 - General powers of the President (present rule 36);
 - General Committee (present rules 41 and 42);
 - Minute of silent prayer or meditation (present rule 64);
 - Committees (present rules 100** and 109);
 (b) Amendment of rules concerning: Additional items for agenda, the President, the General Committee, plenary meetings and committees;
 - (c) Adoption of annex containing recommendations and suggestions of the Special Committee on Methods and Procedures.
- 5/ 377 A (V) Adoption of annex concerning special sessions: amendments to rules 8, 9, 10, 16 and 19, and addition of new rule 65.
- 475 (V) Adoption of new rule concerning: voting on amendments to proposals and on parts of proposals relating to important questions (present rule 86).
- 6/ 684 (VII) Adoption of methods and procedures for dealing with legal and drafting questions (annex II to the rules of procedure).
- 689 B (VII) Amendment of rule concerning closing date of session (rule 2).
- 7/ 791 (VIII) (a) Amendment of rules concerning the composition of the General Committee (rules 38 and 39);
 - (b) Amendment of rule concerning priorities in the consideration of items in the Main Committees (present rule 100).
- 8/ G A resolution 597 (VI).
- 9/ G A (II), Plen., vol. II, pp. 1455-1483, annex 4 (A/388).
- 10/ G A (IV), Suppl. No. 12 (A/937).
- 11/ G A (VIII), Annexes, a.i. 54, pp. 2-7, A/2402.
- 12/ A/316; G A (VII), Annexes, a.i. 50, pp. 2-7, A/2206.

7. The following rules reproduce textually certain Articles of the Charter:

- Rule 49. Notification under Article 12 of the Charter (Article 12 (2));
- Rule 84, 85 and 87. Voting in plenary meetings (Article 18);
- Rule 145. Eligibility of retiring members of the Security Council for re-election (Article 23 (2));
- Rule 147. Eligibility of retiring members of the Economic and Social Council for re-election (Article 61 (2));
- Rule 162 (first sentence). Creation of subsidiary organs of the Assembly (Article 22).

8. In addition, a number of rules are based directly on a provision of the Charter:

- Rule 1. Date of meetings (Article 20);
- Rule 7. Summoning of special sessions (Article 20);
- Rule 25. Composition of delegations (Article 9 (2));
- Rule 31 (first sentence). Election of President (Article 21, second sentence);
- Rule 45 (first part of first sentence). Duties of the Secretary-General (Article 98);
- Rule 50. Regulations concerning the Secretariat (Article 101 (1));
- Rule 143. Annual elections of members of the Security Council (Article 23 (2));
- Rule 144. Qualifications for membership in the Security Council (Article 23 (1));
- Rule 146. Annual elections of members of the Economic and Social Council (Article 61 (2)).
- Rule 149. Term of office and re-eligibility of non-administering members of the Trusteeship Council (Article 86 (1) (c)).

II. ANALYTICAL SUMMARY OF PRACTICE

A. Adoption and amendment of the rules of procedure

1. Question of the relationship of the rules to the functions and powers of the Assembly under the Charter

9. The discussions in the General Assembly with regard to the adoption and amendment of the rules have concerned two main ideas: the improvement of its methods of work, on the one hand, and, on the other, the preservation intact of its functions and powers under the Charter, including the rights of the individual Members of the Organization. Some Members have stressed the first consideration, others the second, although all have agreed that the Assembly must give due attention to both. Thus, there have been discussions as to whether particular amendments to the rules, aimed at curtailing the length of debates, did not, in fact conflict with the right of full expression of views, based, it has been maintained, on the sovereign equality of Members as recognized in the Charter (Article 2 (1)). Further, it has been pointed out that since discussion is one of the principal functions of the Assembly (under Articles 10 and 11), the question arises as to how far the Assembly, in seeking to limit discussions, would, in fact, be limiting its own powers and diminishing its role as a forum for the widest possible examination of international problems. On the other hand, it has been maintained that the role of the Assembly and the rights and interests of its Members would be best protected by orderly procedures and by arrangements under which sessions could be sufficiently short to allow leading statesmen of Member countries to attend them.

10. Throughout the discussions, Members have been concerned that the Assembly should adopt rules of procedure in accordance with its constituent instrument -- the Charter.

11. The general constitutional question arising throughout these discussions would therefore appear to have been the relationship of the rules to the functions and powers of the Assembly under the Charter. The question has arisen most frequently in connexion with proposals to limit debate, to grant more specific powers to presiding officers, particularly in connexion with such limitation, and to adopt limitations on the inclusion of items in the agenda. The problem has also arisen in connexion with the Assembly's powers in relation to other organs. Some of the occasions on which the question has arisen are treated below.

a. DISCUSSION OF MAIN COMMITTEE REPORTS

12. At the second and fourth sessions, ^{13/} some differences of view were expressed regarding restrictions of discussion on the reports of the Main Committees in plenary meeting (see also paragraphs 51-54 below). At the fourth session, objection was made to a proposed revision of the rules providing that questions on which a Main Committee has reported should not be discussed in plenary meeting unless, after a vote taken without debate, one third of the Members voted in favour of it. This, it was said, would limit the powers of the Assembly in violation of the Charter and would prejudice the rights of Members to free expression of opinions. Those representatives supporting the proposed revision agreed on the necessity for preserving the powers of the Assembly and the rights of Members under the Charter, but disagreed with the contention that these were endangered by the proposed change. (For text of the rule as adopted, see paragraph 54 below.)

b. POWERS OF PRESIDING OFFICERS

13. At the fourth, seventh and eighth sessions, ^{14/} the need for preserving the powers of the General Assembly and its right to freedom of discussion was emphasized, in particular in relation to proposals for granting more explicit powers for limiting debate to presiding officers (see paragraphs 58-77 below). On the one hand, it was emphasized that the Organization was based on the sovereign equality of its Member States, which implied the "inalienable right" of their representatives to free expression of views. The Assembly was not entitled to curtail this right by any rule of procedure. Furthermore, discussion was a chief function of the General Assembly, under Article 10 of the Charter, and the Assembly would be acting contrary to that Article in adopting provisions for limiting discussions. Concerning the powers of the President, it was stated that, while he should have all the authority necessary to bring the work of the Assembly to a successful issue, he should not be assigned rights which belonged exclusively to Members. It was maintained that, in granting him powers to limit debates, the Assembly would cease to be master of its own proceedings. On the other hand, the view was expressed that the proposed restrictions on debate were purely of a procedural character and aimed only at expediting proceedings and that there was no intention of limiting freedom of speech in the Assembly; it was always understood that the presiding officer remained under the control of the body over which he presided.

^{13/} For texts of relevant statements, see G A (II), 6th Com., 57th mtg., pp. 145 and 146; G A (IV), 6th Com., 146th-150th mtgs., pp. 23-43; G A (IV), Plen., 236th mtg., pp. 157-165.

^{14/} For texts of relevant statements, see G A (IV), Plen., 235th and 236th mtgs., pp. 152-165; G A (IV), 6th Com., 144th-146th mtgs., pp. 12-20; G A (VII), 6th Com., 347th-353rd mtgs., pp. 235-272; G A (VIII), 6th Com., 360th-366th mtgs., pp. 5-34.

In order to make this clear a provision was adopted at the fourth session specifically stating this principle in the rules. 15/

c. THE AGENDA

14. With regard to the rules pertaining to the agenda (see paragraphs 28-46 below), opposition was expressed at the fourth session 16/ to a draft resolution 17/ which would state in the rules certain criteria governing the examination by an agenda committee (which it was proposed should be established) or by the General Committee of proposed agenda items. On the basis of these criteria, recommendations would have been made to include or exclude agenda items or, in certain cases, to refer them to other organs (see paragraph 17 below). It was maintained that this would limit both the rights of Members to propose and discuss agenda items and the right and duty of the Assembly to discuss the questions brought before it. Similar objections were expressed 18/ to the amendment submitted by the Special Committee, that a two-thirds majority should be required for the inclusion of additional items in the agenda. In favour of that amendment, it was urged that the two-thirds majority adequately safeguarded the position of the Assembly and the rights of Members and would have the practical advantage of discouraging the submission of items at the last moment. The proposed amendment was rejected, and it was decided to provide for a simple majority (see also paragraphs 43 and 44 below). At the first session 19/ fears had also been expressed that the General Committee might infringe the powers of the Assembly. To guard against this, an express provision stating that the General Committee might not decide any political question was written into the rules of procedure. At the fourth session, when the functions of the General Committee were further elaborated in the rules, provisions were inserted to limit the scope of its power to discuss the substance of any item 20/ (see paragraph 41 below).

d. THE POWERS OF THE ASSEMBLY IN RELATION TO OTHER ORGANS

15. The question of the bearing on the powers of the Assembly to adopt rules of procedure, of the functions and powers of the Security Council, has also been raised. Thus, the Committee on procedure for the admission of new Members, according to its report, 21/ had borne in mind that it was beyond its competence to make recommendations which did not conform to the spirit and letter of the Charter. A majority of the Committee further agreed that it could not suggest any procedural rules which would have the effect of defining or limiting the powers and jurisdiction of the Security Council in relation to the admission of new Members. However, during the discussions of the Committee's report in the First Committee, 22/ the view was expressed that the rights conferred on the Assembly by Article 10 could not be restricted in any way by rules of procedure. The rules proposed by the Committee on procedure were adopted.

15/ Present rules 36 and 109.

16/ For texts of relevant statements, see G A (IV), 6th Com., 153rd mtg., pp. 66-68.

17/ G A (IV), 6th Com., Annex, pp. 5 and 6, A/C.6/L.8.

18/ For texts of relevant statements, see G A (IV), 6th Com., 143rd and 144th mtgs., pp. 7-12; 145th mtg., p. 14.

19/ G A (I/1), Plen., 2nd mtg., pp. 50-57.

20/ See rule 40.

21/ G A (II), 1st Com., annex 7 (A/384), p. 547.

22/ G A (II), 1st Com., 116th mtg., p. 526.

16. At the second part of the third session, 23/ during the discussion on a report of the Interim Committee, it was objected that suggested revisions to the rules of procedure to provide for the appointment of a rapporteur or conciliator by the President of the General Assembly were contrary to the Charter as conflicting with the Charter provisions concerning the functions of the Security Council. The revisions were referred back to the Interim Committee for further study.

17. At the fourth session, the Special Committee on Methods and Procedures drew attention in its report 24/ to the power of the Assembly to decide to refer certain items to other organs of the United Nations, without preliminary debate. In particular, it was suggested that questions of an exclusively economic, social or cultural nature should not, as a rule, be submitted to the Assembly until they had first been considered by the Economic and Social Council. A draft resolution 25/ was submitted to write this suggestion into the rules of procedure. The view was expressed in the Sixth Committee 26/ that this draft resolution was unconstitutional; it would limit the powers of the General Assembly, which had the duty to discuss the items placed before it and also, under Article 13, to initiate studies on economic, social, cultural and educational matters. The relevant parts of the proposal were withdrawn and the Committee decided not to approve the relevant paragraph of the report of the Special Committee (see paragraph 45 below). Opposition was also expressed 27/ to the recommendation that international conventions negotiated by international conferences at which all Members of the United Nations had been represented by government representatives should not be examined in detail by the General Assembly. It was stated that this recommendation was contrary to Article 60 of the Charter, under which the General Assembly was asserted to have final responsibility for international conventions. While primary responsibility for drafting conventions relating to international economic and social co-operation rested with the Economic and Social Council, the power of the General Assembly to revise the work of the Council should not be limited. On the other hand, it was stated 28/ that it was impracticable for the General Assembly to draft conventions, and that its final authority to discuss them and to give its general views on them was expressly provided for. The paragraph of the Special Committee's report relating to the limitation of examination of international conventions by the Assembly was approved. With regard to the suggestion by the Special Committee 29/ that the Assembly might consider calling conferences of plenipotentiaries to draft conventions, the view was expressed 30/ that this would be a violation of the Charter which provided that such conferences were to be convened by the Economic and Social Council. The relevant paragraph of the Committee's report was, however, approved.

18. At the seventh and eighth sessions, 31/ the need for preserving the powers of the Assembly to review the work of the Economic and Social Council and of the Trusteeship Council was also stressed in discussions concerning procedures for considering the reports of these organs.

23/ G A (III/2), Ad Hoc Pol. Com., 29th mtg., pp. 3-5.

24/ G A (IV), Suppl. No. 12 (A/937), para. 12.

25/ G A (IV), 6th Com., Annex, pp. 5 and 6, A/C.6/L.8.

26/ G A (IV), 6th Com., 153rd mtg., pp. 66-68.

27/ G A (IV), 6th Com., 155th mtg., pp. 75-78.

28/ Ibid.

29/ G A (IV), Suppl. No. 12 (A/937), para. 14.

30/ G A (IV), 6th Com., 155th mtg., p. 78.

31/ See also in this Repertory under Article 15.

e. RELATION OF THE RULES TO SPECIFIC CHARTER PROVISIONS

19. The question whether the rules must be related to specific Charter provisions has also been raised. For example, at the second part of the third session, ³² in the discussions concerning the Interim Committee's suggested amendments to the rules to provide for the appointment by the President of a conciliator or arbitrator (see paragraph 16 above), it was objected that neither Article 21 nor Article 14, nor any other provision of the Charter, indicated that the President should at any time act as rapporteur or conciliator in the settlement of international disputes and that the proposed amendments to the rules thus had no foundation in the Charter. On the other hand, the view was expressed that while, for the time being, no useful purpose would be served by proposing amendments to the rules, the Charter could be interpreted in such a way as to enable the United Nations effectively to perform its essential task -- the maintenance of peace.

2. Method and procedures employed in adopting and amending the rules

20. As stated in the General Survey, the rules of procedure of the General Assembly have frequently been amended as a result of general studies of the Assembly's procedures. In some cases, amendments to the rules have been made to give effect to previous decisions of substance. Such amendments have been adopted either as part of the initial decision of substance, as in the case of the provision for special emergency sessions under the General Assembly resolution entitled "Uniting for peace" ^{adopted} at the fifth session, or as a result of a prior decision of principle by the Assembly, as, for example, its decision at the first part of the third session to adopt Spanish as one of its working languages. On other occasions, the general principles have first been discussed in plenary meeting, as, for example, the question of nominations of officers discussed at the first part of the first session and the memorandum of the Secretary-General on measures to limit the duration of regular sessions of the General Assembly discussed at the seventh session; after such general discussion, detailed consideration of any relevant amendments to the rules of procedure has been entrusted to the Sixth Committee.

21. Although questions concerning revisions to the rules of procedure have, on occasion, been submitted to other committees, the practice of referring such questions to the Sixth Committee has become general and has received specific approval by the Assembly. At the sixth and seventh sessions, ³³ the General Assembly considered the question of its methods and procedures for dealing with legal and drafting questions and ^{adopted} the recommendation, contained in resolution 684 (VII), that, "whenever any Committee contemplates making a recommendation for the adoption by the General Assembly of any amendment to the rules of procedure of the General Assembly, the matter shall, at some appropriate stage of its consideration by that Committee, be referred to the Sixth Committee for advice on the drafting of such amendment and of any consequential amendment". This principle had received considerable support at the sixth session, and had been embodied in the recommendations of the Special Committee ³⁴ established at that session. No amendments to this recommendation were submitted at the seventh session.

^{32/} G A (III/2), Ad Hoc Pol. Com., 29th mtg., pp. 3-5; Plen., 197th mtg., pp. 165-167.

^{33/} G A (VI), 6th Com., 296th-293rd mtgs., pp. 26-67, and 266th mtg., p. 79;

G A (VII), 6th Com., 306th-312th mtgs., pp. 5-51; Plen., 391st mtg., pp. 183-185.

^{34/} G A (VII), Annexes, a.i. 53, pp. 2-6, A/2174, para. 40 (c).

22. The question of the majority required for adoption of the rules arose on one occasion. At the first part of the first session, ^{35/} when the Assembly was considering an amendment to the rule concerning nominations of officers, the Chairman suggested that, in view of the importance of the question, the Assembly might wish to take its decision by a two-thirds majority. Certain representatives stressed that questions relating to procedure, however important, should be decided by a majority of those present and voting, and the amended rule was adopted by the Assembly by 25 votes to 18, with 8 delegations absent.

B. Some significant features of the rules

1. General characteristics of the rules

23. The question of how explicit the rules of procedure of the Assembly should be has been raised on various occasions. For example, at the fourth session, ^{36/} the Sixth Committee considered the recommendation of the Special Committee on Procedures and Organization for a new rule providing that all items proposed for inclusion in the agenda "shall be accompanied by a memorandum and, if appropriate, by basic documents or by a draft resolution". The deletion of the last part of the proposed rule was suggested on the ground that it was unnecessary because it was optional and that it might give rise to misunderstanding. It was maintained that the rules of procedure should contain only precise provisions of a mandatory nature. On the other hand, it was held that the provision was useful and that it should not give rise to misunderstandings since the Special Committee's intentions were clearly stated in its report. The proposed rule was amended to specify that the memorandum should be "explanatory" and that the other documentation should be submitted "if possible" rather than "if appropriate".

24. Similarly, during the discussions at that session ^{37/} concerning the powers of the President and of Chairmen of committees to limit debate, the question was raised whether it was sufficient to include a specific provision in one rule, or whether a provision was required in each of the relevant rules stating specifically that the President (or Chairman) was subject to the authority of the General Assembly which could reverse his ruling if it so desired. Some representatives felt that this was implicit in the rules, that a provision in one rule for appeal against the ruling of the President could be taken as applying to another rule, that it was clear from the report of the Special Committee that it was intended that the President should always be subject to the authority of the Assembly and that, if there was any doubt, mention of the possibility of appeal could be made in the records of the meeting. On the other hand, it was maintained that the rules must be self-explanatory and that neither another rule nor the record of a meeting could be relied upon to interpret the rules. It was later ^{38/} decided to add an explicit provision stating that the President and the Chairmen of committees remained under the authority of the bodies over which they presided.

Annexes to the rules

25. Certain general guiding principles have, from time to time, been inserted as annexes to the rules of procedure. At the fourth session, the Sixth Committee reviewed

^{35/} G A (I/1), Plen., 18th mtg., pp. 292-295.

^{36/} G A (IV), 6th Com., 143rd mtg., pp. 4-6.

^{37/} G A (IV), 6th Com., 144th-146th mtgs., pp. 12-21.

^{38/} G A (IV), 6th Com., 151st mtg., pp. 50-53.

various recommendations and suggestions that had been made by the Special Committee but had not been embodied in suggested revisions to the rules of procedure. The Sixth Committee approved certain paragraphs and took note of others. ^{39/} After considering a proposal ^{40/} that the suggestions be annexed to the rules of procedure, it decided to recommend ^{41/} that the Secretary-General be requested to prepare a document embodying the approved recommendations and suggestions in convenient form for use by the General Committee and delegations. These are reproduced as annex I of the rules of procedure.

26. Again, in connexion with the discussion of the methods and procedures of the Assembly for dealing with legal and drafting questions, principles which the Assembly did not choose to incorporate in its rules of procedure were later included in an annex. A draft resolution ^{42/} submitted at the sixth session provided for the consideration by a legal committee of amendments to the rules of procedure to give effect to certain proposals, among others, that legal questions (including proposals to request an advisory opinion of the International Court of Justice, proposals to refer a matter to the International Law Commission and proposals entailing an amendment of the rules of procedure) should be referred to the Sixth Committee or to a legal sub-committee. However, during both the sixth and seventh sessions, doubts were expressed concerning the advisability of making the suggested provisions mandatory. At the sixth session, a draft resolution ^{43/} was submitted which would incorporate certain of the suggestions which had secured general approval as a guide for the General Assembly and its committees as an annex to the rules of procedure under the title of "Suggestions of the Legal Committee on the Assembly's methods and procedures for dealing with legal and drafting questions". The draft resolution was not voted on, as it was decided, under resolution 597 (VI), to appoint a committee to study the question further. At its seventh session, however, the General Assembly decided, under resolution 684 (VII), to incorporate these recommendations in an amended form, as well as certain paragraphs of the report of the Special Committee, in an annex to the rules of procedure of the Assembly. ^{44/}

27. A draft resolution ^{45/} which would provide for the incorporation in an annex of certain paragraphs contained in the report of the Special Committee on Measures to Limit the Duration of Regular Sessions of the General Assembly was, however, not adopted at the eighth session. Criticisms of the Committee's recommendations had been expressed on the grounds that they would either restrict the freedom of the Assembly and of Members or that, by being either obvious of permissive, they would serve no useful purpose. The view was also expressed that it would be useless to incorporate the Committee's recommendations in an annex to the rules of procedure, where they would have no legal validity. ^{46/}

^{39/} G A (IV), 6th Com., 155th and 156th mtgs., pp. 74-84.

^{40/} G A (IV), 6th Com., Annex, pp. 5 and 6, A/C.6/L.8.

^{41/} G A (IV), Plen., Annex, pp. 181-190, A/1026 and Corr.1, para.63; the recommendation was adopted in resolution 362 (IV).

^{42/} G A (VI), Annexes, a.i. 63, pp. 2 and 3, A/C.6/L.175.

^{43/} G A (VI), Annexes, a.i. 63, pp. 6 and 7, A/C.6/L.184.

^{44/} These now form annex II to the rules.

^{45/} G A (VIII), Annexes, a.i. 54, pp. 7-9, A/C.6/L.292/Rev.1.

^{46/} G A (VIII), 6th Com., 360th-366th mtgs., pp. 5-36.

2. The Agenda

28. The rules provide for the following procedure for drawing up the agenda:

(1) The provisional agenda for a regular session is drawn up by the Secretary-General and communicated to Members at least sixty days before the opening of the session; 47/
(2) It includes certain particular types of items, including items proposed by principal organs, by Members and by the Secretary-General; 48/ (3) The inclusion of supplementary items may be requested up to thirty days before the opening of a session and such items are placed on a supplementary list; 49/ (4) Additional items "of an important and urgent character" proposed for inclusion less than thirty days before the opening of, or during, a session may be placed on the agenda, if a majority of the Members present and voting so decides. 50/ No additional item may, however, be considered until seven days have elapsed since it was placed on the agenda, unless the Assembly by a two-thirds majority decides otherwise, and until a committee has reported upon the question concerned.

29. Separate rules 51/ govern the provisional agenda, supplementary items and additional items for special sessions.

30. The rules also provide that the provisional agenda and the supplementary list, together with the report of the General Committee, shall be submitted to the General Assembly for approval as soon as possible after the opening of the session; 52/ that items may be amended or deleted by the Assembly by a majority of the Members present and voting; 53/ and that debate on the inclusion of an item, when that item has been recommended for inclusion by the General Committee, shall be limited to three speakers in favour of and three against the inclusion, 54/ with the further provision that the President may limit the time to be allowed to speakers under this rule.

31. Closely linked with the rules concerning the agenda are those concerning the General Committee. These provide for its composition 55/ (the President of the General Assembly, the seven Vice-Presidents, the Chairmen of the six Main Committees and the Chairman of the Ad Hoc Political Committee when one is established) and lay down its functions. Rules 40 and 41 state:

"The General Committee shall, at the beginning of each session, consider the provisional agenda, together with the supplementary list, and shall make recommendations to the General Assembly with regard to each item proposed, concerning its inclusion in the agenda, the rejection of the request for inclusion, or the inclusion of the item in the provisional agenda of a future session. It shall, in the same manner, examine requests for the inclusion of additional items in the agenda, and shall make recommendations thereon to the General Assembly. In considering matters relating to the agenda of the General Assembly, the General Committee shall not discuss the substance of any item, except in so far as

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- 47/ Rule 12.
48/ Rule 13.
49/ Rule 14.
50/ Rule 15.
51/ Rules 16-19.
52/ Rule 21.
53/ Rule 22.
54/ Rule 23.
55/ Rule 38.

this bears upon the question whether the General Committee should recommend the inclusion of the item in the agenda, the rejection of the request for inclusion, or the inclusion of the item in the provisional agenda of a future session, and what priority should be accorded to an item the inclusion of which has been recommended.

"The General Committee shall make recommendations to the General Assembly concerning the closing date of the session. It shall assist the President and the General Assembly in drawing up the agenda for each plenary meeting, in determining the priority of its items, and in the co-ordination of the proceedings of all committees of the General Assembly. It shall assist the President in the general conduct of the work of the General Assembly which falls within the competence of the President. It shall not, however, decide any political question."

32. In addition, the rules provide that the General Committee shall meet periodically throughout each session to review and make recommendations concerning progress. It may also meet at such other times as the President deems necessary or upon the request of any of its Members. 56/ A Member, which has requested the inclusion of an item but is not represented on the General Committee, is entitled to attend any meeting of the Committee at which its request is discussed, and may participate, without vote, in the discussion of that item. 57/ The rules also provide that the General Committee may revise the resolutions adopted by the Assembly, changing their form but not their substance; any such changes are to be reported to the General Assembly for its consideration. 58/

33. At its fourth session, the General Assembly considered the question of the establishment of a special agenda committee. The Special Committee on Methods and Procedures referred in its report 59/ to proposals for such a committee to meet before the opening of regular sessions to make recommendations to the plenary meeting concerning the agenda. It was also suggested that the committee might consider questions relating to the organization of the session, the allocation of items to committees and the priority to be given to the consideration of certain items. In view, however, of the doubts of some of its members concerning the usefulness of the proposed agenda committee, the degree of authority it would possess and the nature of its relationship to the General Committee, the Special Committee decided to bring the question to the attention of the Assembly and to ask the Secretary-General to prepare a study on the proposals previously submitted, to report on the technical, legal and financial aspects of the question and to submit to the Assembly his views on the composition and functions of an agenda committee.

34. The Secretary-General in his memorandum, 60/ after reviewing the previous history of the question, stated the opinion that there were no legal obstacles to the establishment of a special agenda committee to meet between sessions and to be empowered to make recommendations on the agenda of a subsequent session. He thought, however, that it was doubtful whether the various problems relating to the agenda, which were outlined in the memorandum, could be more satisfactorily dealt with by a new committee than by the General Committee. In the Sixth Committee, a large measure

56/ Rule 42.

57/ Rule 43.

58/ Rule 44.

59/ G A (IV), Suppl. No. 12 (A/937), para. 15.

60/ G A (IV), 6th Com., Annex, pp. 1-4, A/997.

of agreement with this view was expressed, and the Committee approved 61/ the Secretary-General's conclusions regarding the establishment of an agenda committee by 24 votes to 4, with 17 abstentions. Parts of a proposal 62/ to insert specific provisions for an agenda committee in the rules were withdrawn.

35. This proposal, however, also provided that, if it were decided not to establish an agenda committee, certain "principles and considerations", which it was recommended should be taken into account by that committee, should be considered by the General Committee in deciding whether to recommend the inclusion, non-inclusion or postponement of a given item, and its allocation to a Main Committee. A provision to that effect, it was proposed, should be written into the rules. The "principles and considerations" included the relative importance and urgency of the item concerned, the length of time which its consideration was likely to occupy, and the fact that, as a general rule, questions of an exclusively economic, social and cultural nature should not be submitted to the Assembly until they had first been submitted to the Economic and Social Council. A number of representatives 63/ opposed this part of the proposal on the ground that it would involve the General Committee in discussions of substance and would detract from the rights of the Assembly, and it was withdrawn (see also paragraphs 17 and 45). Certain of the principles (that is to say, the drafting of conventions by other bodies, the desirability of allocating items to the committee with the lightest agenda, the direct consideration of items in plenary meetings), formulated as recommendations in the report of the Special Committee, were approved by the General Assembly 64/ but, with the exception of a statement that the General Committee should recommend which items should be considered in plenary meeting, these principles, as adopted, did not refer to the functions of the General Committee.

36. During the discussions in the Sixth Committee, however, the view was expressed 65/ that the question of the preparation of the agenda was one of fundamental importance and that it would be well to instruct a particular body, such as the Interim Committee, for example, to undertake a detailed examination of the agenda before the opening of each session and to make recommendations on it to the Assembly.

37. As regards the rules of procedure concerning the agenda, the principal questions, as indicated above (paragraph 14) would appear to have arisen out of the desire of the Assembly to protect the rights of its Members and to preserve its own functions and powers. They chiefly concern: (1) the delegating questions of substance regarding the items on the provisional agenda to a body with limited membership; and (2) limitations on the agenda.

38. The first question was raised at the first part of the first session of the Assembly, 66/ when the view was expressed that the powers of the General Committee might be so interpreted as to infringe those of the Assembly, and that the principle stated by the Preparatory Commission's Sub-Committee on the General Committee 67/ that the General Committee could not take decisions on "important political questions" might be susceptible to varying interpretations by the Committee and by the Assembly. Moreover, in order to decide what constituted an important political question, the

61/ G A (IV), 6th Com., 156th mtg., p. 84.

62/ G A (IV), 6th Com., Annex, pp. 5 and 6, A/C.6/L.8.

63/ G A (IV), 6th Com., 153rd mtg., pp. 66-68

64/ G A resolution 362, (IV), annex II.

65/ G A (IV), 6th Com., 156th mtg., p. 83.

66/ G A (I/1), Plen., 2nd mtg., pp. 50-57.

67/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, appendix II, p. 124.

General Committee would have to engage in a discussion of the substance of the items. An amendment 68/ was submitted to provide that the General Committee should consist of the heads of all the delegations, and that it should have an executive committee functioning under its authority. During the discussions on this amendment in the Sixth Committee and in the Sub-Committee appointed by it, it was generally agreed 69/ that the functions of the General Committee were purely administrative. The relevant rule 70/ was amended to provide that the General Committee should not decide any political question and a new rule was added to provide that any Member which had requested the inclusion of an item in the agenda but was not represented on the General Committee should participate, without vote, in the discussion of the item. 71/

39. More explicit provisions concerning the functions of the General Committee were adopted at the fourth session on the recommendation of the Special Committee on Methods and Procedures, and the General Committee's right to recommend to the Assembly not to include a question in the agenda or to include it in the provisional agenda of a future session was specifically stated. 72/ A limitation was, however, added to state that the General Committee was not to discuss the substance of any item

"except in so far as this bears upon the question whether the General Committee should recommend the inclusion of the item in the agenda, the rejection of the request for inclusion, or the inclusion of the item in the provisional agenda of a future session, and what priority should be accorded to an item the inclusion of which has been recommended".

The revised rule was approved unanimously, without discussion. 73/

40. At the sixth session, there was some discussion as to whether the General Committee had the power to recommend an indefinite postponement of the consideration of an item. The Committee had recommended 74/ that the item on the supplementary list relating to the Moroccan question "be postponed for the time being". It had also recommended that the request for the inclusion of the additional item relating to the representation of China be rejected and that the Assembly decide "to postpone consideration for the duration of the meeting in Paris of the sixth regular session", or any further proposals on this question.

41. During the discussions of the General Committee's recommendations in the Assembly, 75/ certain representatives expressed the view that, under rule 40, the General Committee was obliged to recommend one of the three courses of action provided in the rule and did not have the power to recommend indefinite postponement; in doing so it infringed the rights of the Assembly. One representative 76/ interpreted the recommendation on the Moroccan question as meaning that the item should be considered later in the session. Another representative 77/ expressed the view that, since the

68/ G A (I/1), Plen., 2nd mtg., pp. 55 and 56.

69/ G A (I/1), pp. 559-563, annex 1 A (A/14), paras. 7, 8 and 9.

70/ Present rule 41, see para. 31 above.

71/ Present rule 43.

72/ Present rule 40, see para. 31 above.

73/ G A (IV), 6th Com., 145th mtg., p. 21.

74/ G A (VI), Annexes, a.i. 7, pp. 14 and 16, A/1950, para. 5.

75/ G A (VI), Plen., 342nd, 353rd and 354th mtgs., pp. 96-98, 236-269, on the Moroccan question; G A (VI), Plen., 342nd mtg., pp. 99-104, on the question of the representation of China.

76/ G A (VI), Plen., 342nd mtg., pp. 96 and 97.

77/ G A (VI), Plen., 354th mtg., pp. 249-251.

General Committee had the power to recommend the rejection of a request for the inclusion of an item, it followed that it also had the power to recommend that a decision on the inclusion of an item be postponed, even if this was not expressly provided for in the rules.

42. The General Assembly adopted the General Committee's recommendation for postponement by 28 votes to 23, with 7 abstentions, in the case of the Moroccan question and by 37 votes to 11, with 4 abstentions, in the case of the question of the representation of China.

43. The question of limitations to be placed on the inclusion of items on the agenda is also illustrated by the discussions of the Assembly at the fourth session concerning the majority required for the inclusion of additional items in the agenda. The Special Committee on Methods and Procedures recommended 78/ an amendment to the rules to provide that a two-thirds majority should be required for the inclusion of additional items in the agenda, whether proposed during a regular session or during the thirty-days before the opening of a regular session. The Special Committee considered that the inclusion of such items should be exceptional, because it might result in burdening the agenda because it did not allow adequate time for consideration by delegations.

44. In the Sixth Committee, 79/ objections were raised; it was stated that it was an infringement of the rights of Members and contrary to Article 18 of the Charter, and that the two-thirds majority requirements should not be unduly extended. On the other hand, the view was expressed that the two-thirds majority would be a suitable criterion for judging whether a new item was important or urgent, that the inclusion of a new item submitted less than thirty days before the opening of a session might be held to constitute an important question within the meaning of Article 18 (3) which gave the Assembly the right to determine whether that category of questions should be decided by a two-thirds majority, and that, in any event, the rules of procedure already provided for the application of the two-thirds requirement to certain questions of procedure. The Sixth Committee rejected the proposed amendment to the rules, adopting instead a revised version of the rule providing for a simple majority. However, it also adopted a new rule providing that items on the agenda might be amended or deleted by a simple majority; a further rule adopted provided for limitation of debate on the inclusion of items in the agenda. 80/

45. Discussions concerning the question of limitations on the agenda also arose in connexion with the Special Committee's statement drawing the attention of the Assembly to its power to decide to refer certain items without discussion to other organs of the United Nations. In particular, the Special Committee emphasized that questions of an exclusively economic, social or cultural nature should not, as a rule, be submitted to the Assembly until they had been considered by the Economic and Social Council. Several representatives objected to this statement as constituting a restriction of the functions of the Assembly under the Charter, and the Sixth Committee decided 81/ by 23 votes to 12, with 7 abstentions, not to approve this paragraph (see also paragraphs 17 and 35 above).

78/ G A (IV), Suppl. No. 12 (A/937), para. 11.

79/ G A (IV), 6th Com., 143rd and 144th mtgs., pp. 7-12; 145th mtg., p. 14.

80/ Present rules 22 and 23.

81/ G A (IV), 6th Com., 155th mtg., p. 75.

46. At the seventh and eighth sessions, 82/ objections on similar grounds were also expressed to the suggestions for pruning the agenda, contained in the memorandum of the Secretary-General 83/ and in the report of the Special Committee on Measures to Limit the Duration of Regular Sessions; 84/ these suggestions covered assigning of priorities, and establishment of provisions that recurring items should not be considered at each session and that reports by subsidiary organs should not automatically be placed on the agenda of the Assembly. Other representatives, however, stressed the practical need for curtailing the agenda so as to make shorter sessions possible.

3. Organization of sessions

47. The organization of sessions may be summarized briefly as follows. On the basis of a report by the General Committee, the General Assembly adopts its agenda and allocates the different agenda items to committees, on which all Members have the right to be represented, for consideration and report to the plenary meeting. The rules 85/ provide for six Main Committees: (1) the Political and Security Committee (including the regulation of armaments); (2) the Economic and Financial Committee; (3) the Social, Humanitarian and Cultural Committee; (4) the Trusteeship Committee (including Non-Self-Governing Territories); (5) the Administrative and Budgetary Committee; and (6) the Legal Committee. The rules 86/ also provide that the Assembly may set up such committees as it deems necessary for the performance of its functions; under this provision the Assembly, at the first and second sessions, established various other committees on which all Members had the right to be represented, and at the third and all subsequent regular sessions it established an Ad Hoc Political Committee.

48. The committee structure is that originally proposed by the Preparatory Commission. The Chairmen of the Main Committees have always been represented on the General Committee. At the fourth session, 87/ the Assembly made provision for the participation in the discussions of the General Committee, without vote, of Chairmen of other committees upon which all Members had the right to be represented and which were established by the General Assembly to meet during the session. At its eighth session, 88/ recognizing the special position which the Ad Hoc Political Committee had achieved, the Assembly adopted an amendment to the rules to grant the Chairman of that Committee, when one was established, membership with the right of vote in the General Committee.

49. Certain questions have arisen concerning the relationship between the plenary meetings and the Main Committees. One relates to the discussion of agenda items. The rules of procedure 89/ provide that the General Assembly shall not, unless it decides otherwise, make a final decision on any item until it has received the report of a committee on that item.

82/ G A (VII), Plen., 387th and 388th mtgs.; G A (VIII), 6th Com., 360th-366th mtgs., pp. 5-36.

83/ G A (VII), Annexes, a.i. 50, pp. 2-7, A/2206.

84/ G A (VIII), Annexes, a.i. 54, pp. 2-7, A/2402.

85/ Rule 101.

86/ Rule 98.

87/ G A resolution 362 (IV), annex I, revised rule 33 (present rule 38).

88/ G A resolution 791 (VIII).

89/ Rule 67.

50. This rule as amended does not differ substantially from that originally proposed by the Preparatory Commission. In its report at the fourth session, 90/ the Special Committee on Methods and Procedures observed that time might be saved if certain questions were considered directly in plenary meeting, without preliminary reference to committee and suggested that this method should be introduced on an experimental basis. The fear was expressed 91/ that, if this provision were approved, it might be contrary to the rule relating to reference of items to committees. Other representatives 92/ held that the proposed provision would not conflict with the existing rule, since consideration in plenary meeting without reference to a committee would be exceptional; they supported the recommendation, noting the suggestion of experimental application. The relevant paragraph was approved by 25 votes to 1, with 17 abstentions.

51. Differences of opinion have also been expressed concerning the discussion in plenary meeting of the General Assembly of the reports of the Main Committees. The provisional rules of procedure had provided that the discussion should take place if one third of the members of the relevant committee considered it necessary. At the second session 93/ the view was expressed that this rule reduced the Assembly in plenary meeting to a mere recording machine and prejudiced the rights of minorities of Members and of those Members which could not be represented in all committees. It was decided to amend the rule to provide that discussion should take place if one third of the Members present and voting in plenary meeting, rather than one third of the Members of the committee, considered it to be necessary.

52. The Special Committee on Methods and Procedures in its report at the fourth session 94/ of the Assembly recommended a revision of this rule, to state that "questions on which a Main Committee has submitted a report shall not be discussed in plenary meeting unless, after a vote taken without debate, at least one third of the Members present and voting indicate that they consider discussion necessary". It was objected 95/ that the proposed amendment would endanger the basic principle of free discussion, would prejudice the rights of Members and would reduce the plenary meeting to a formality contrary to the specific Charter provision that the Assembly had the right to discuss and study any questions falling within its competence. The functions of the Assembly must not be limited and it must not be deprived of its rights under the Charter. The composition of the General Assembly in committee and in plenary meeting was not identical, because the representatives who attended the committees were generally technical experts while the delegations present in the plenary meetings served in a political capacity. Therefore, it was to the Assembly, as the only sovereign body, that Member States should be able to appeal in the last resort and it was before that body that the minority should be able to defend its viewpoint.

53. On the other hand, it was stated 96/ that all Members of the United Nations could be represented in the Main Committees, that all that was intended was to prevent

90/ G A (IV), Suppl. No. 12 (A/937), para. 23.

91/ G A (IV), 6th Com., 155th mtg., p. 79.

92/ Ibid., pp. 79 and 80.

93/ G A (II), 6th Com., 57th mtg., pp. 145 and 146.

94/ G A (IV), Suppl. No. 12, (A/937), para. 27.

95/ G A (IV), 6th Com., 146th-150th mtgs., pp. 23-43; G A (IV), Plen., 236th mtg., pp. 157-165.

96/ Ibid.

the needless repetition of arguments in committees and in the Assembly, and that the provision for discussion if one third of the Members present and voting so desired was sufficient to safeguard minorities of Members, if the question was an important one or if there were any question of reversing a committee's recommendation, the required one third of the votes would be found. Moreover, amendments could be submitted and would have to be circulated at least one day in advance of the meeting at which they were to be discussed or voted on; therefore, delegations attending the plenary meeting would be familiar with the subjects under consideration. It was agreed that it was essential to preserve the wide competence of the General Assembly, but it was also necessary to preserve its prestige and authority by enabling it to complete its work within a sufficiently short time to allow eminent representatives of all countries to attend. After the rejection, by 24 votes to 22, with 3 abstentions, of the text proposed by the Special Committee, and by a series of votes, of an amendment 97/ which would have provided that a debate should not take place if two thirds of the Members present and voting so decided, it was decided by 25 votes to 21, with 4 abstentions, to retain 98/ the existing rule, with the addition of a clause stating that any proposal to discuss a report should not be debated, but should be put immediately to the vote. The revised rule was adopted in plenary meeting by 28 votes to 24, with 3 abstentions. 99/

54. The relevant rule 100/ therefore reads:

"Discussion of a report of a Main Committee in a plenary meeting of the General Assembly shall take place if at least one-third of the Members present and voting at the plenary meeting consider such a discussion to be necessary. Any proposal to this effect shall not be debated, but shall be immediately put to the vote."

55. Certain differences exist between the procedures set forth in the rules for the plenary meeting and those for the committees. In committee, all decisions are taken by a simple majority, 101/ except that a two-thirds majority of the members present and voting is required for the re-consideration of a proposal. 102/ A further difference in the voting procedures is that in the plenary meeting, if a vote is equally divided on matters other than elections, a second vote is taken at a subsequent meeting within forty-eight hours; 103/ in committee, however, a proposal on which there has been an equally divided vote is regarded as rejected. 104/ Other differences exist regarding competence (see paragraph 80 below) and quorum (see paragraph 89 below).

56. The general question of the difference in procedures relating to plenary meetings and to meetings of the Main Committees was raised during the fourth session of the General Assembly. The view was expressed that the committees were technical bodies and that it was for the Assembly in plenary meeting to assess the work of the committees from a political point of view. On this ground, certain Members opposed limitations on the debate by the General Assembly on committee reports (see paragraph 52 above).

97/ G A (IV), 6th Com., 149th mtg., para. 26, A/C.6/L.11. A similar amendment G A (IV), Plen., 256th mtg., (A/1041, p. 161) was rejected in the plenary meeting by 28 votes to 17, with 9 abstentions.

98/ G A (IV), 6th Com., 150th mtg., paras. 14 and 15, A/C.6/L.12.

99/ G A (IV), Plen., 256th mtg., para. 147.

100/ Rule 68.

101/ Rule 126. See also rules 85-87 concerning voting in plenary meeting.

102/ Rule 124.

103/ Rule 97.

104/ Rule 134.

Amendments stating more specifically the powers of the Chairmen of committees to propose limitation of debate were also opposed. 105/ In this connexion, it was contended that it was impossible mechanically to adapt the rules of the General Assembly to its committees. In the committees it was often necessary for the representatives to speak repeatedly in order to examine different aspects of a problem as well as to clarify any new question which might be raised in the course of the debate. Limitation of discussion in the committees would be harmful since it was the arguments advanced in favour of limiting the debates in plenary meeting. On the other hand, it was stated 106/ that a distinction could not be drawn between the functions of the President of the General Assembly and the Chairman of a committee in this matter.

57. The relations between the respective Main Committees have also given rise to some discussion. At the fourth session of the Assembly, 107/ the Special Committee's recommendation that questions falling within the competence of two or more committees should, preferably, be referred to the committee with the lightest agenda was approved without discussion, by 35 votes to none, with 8 abstentions. The question was again raised at the sixth and seventh sessions 108/ in connexion with the consideration of the procedures of the General Assembly for dealing with legal and drafting questions. It was objected that the provisions contained in draft resolutions 109/ before the two sessions which would have stated that a Main Committee was to refer certain legal questions to the Sixth Committee for advice would, to some extent, subordinate other committees to the Sixth. Every committee, some representatives considered, should be left free to decide for itself whether or not to adopt the procedures suggested; a certain flexibility should be retained. Two amendments 110/ to the relevant draft resolution adopted at the seventh session provided for optional rather than mandatory consultation of the Sixth Committee by other Main Committees with reference to request to the International Court of Justice for advisory opinions and the referral of matter to the International Law Commission.

4. Powers of presiding officers

58. The question of the extent of the powers of presiding officers has arisen most frequently in connexion with proposals to extend or to render more explicit their power to propose certain limitations on the right to speak or to impose such limitations. The relevant discussions and decisions, in so far as they apply to the powers of the presiding officers, are dealt with here rather than in the paragraphs entitled "Limitations on the right to speak".

105/ G A (IV), 6th Com., 151st mtg., pp. 50-52.

106/ G A (IV), 6th Com., 151st mtg., p. 5.

107/ G A (IV), 6th Com., 155th mtg., p. 79.

108/ G A (VI), 6th Com., 256th-263rd mtgs., pp. 31-67; G A (VII), 6th Com., 306th-312th mtgs., pp. 5-37.

109/ G A (VI), Annexes, a.i. 63, pp. 2 and 3, A/C.6/L.175; G A (VII), Annexes, a.i. 53 p. 6, A/C.6/L.234.

110/ G A (VII), Plen., 391st mtg., p. 184. The amendments were adopted respectively, by 25 votes to 20, with 6 abstentions, and by 22 votes to 20, with 7 abstentions.

59. The rules 111/ contain the following statement of the general powers of the President:

"In addition to exercising the powers which are conferred upon him elsewhere by these rules, the President shall declare the opening and closing of each plenary meeting of the session, shall direct the discussions in plenary meeting, ensure observance of these rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order, and, subject to these rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat. The President may, in the course of the discussion of an item, propose to the General Assembly the limitation of the time to be allowed to speakers, the limitation of the number of times each representative may speak on any question, the closure of the list of speakers or the closure of the debate. He may also propose the suspension of the adjournment of the meeting or the adjournment of the debate on the item under discussion."

60. It is further stated 112/ that the President, in the exercise of his functions, remains under the authority of the Assembly.

61. There are various other provisions throughout the rules concerning the powers and functions of the President. In certain instances these give him the power to limit the time to be allowed to speakers as distinguished from the power to propose such a limitation to the General Assembly.

62. Thus, he may limit the time to be allowed to speakers in debates concerning: the inclusion of an item in the agenda when the item has been recommended by the General Committee; 113/ the adjournment of debate; 114/ closure of debate; 115/ and suspension or adjournment of meeting 116/. He may also limit the time to be allowed for explanations of vote, and the rules in this instance provide that he "shall not permit the proposer of a proposal or of an amendment to explain his vote" on that proposal or amendment. 117/

63. Similar rules 118/ apply to the Chairmen of the Main Committees.

64. The general question of the extent of Presidential powers arose at the fourth session of the Assembly 119/ in connexion with various amendments to the rules of procedure proposed by the Special Committee on Methods and Procedures. The debate concerned provisions relating both to the President's power to propose to the Assembly limitations on discussion, as well as to his power to limit the number of speakers in the above-mentioned instances without reference to the Assembly. Objections were raised in particular to suggested provisions regarding the President's powers in the latter category. On the other hand, it was stated that the measures proposed were purely technical in character, that it was advisable to limit long procedural

111/ Rule 35.

112/ Rule 36.

113/ Rule 23.

114/ Rule 76.

115/ Rule 77.

116/ Rule 78.

117/ Rule 90.

118/ Rules 108, 109, 117, 118, 119 and 129.

119/ G A (IV), 6th Com., 144th-146th mtgs., pp. 12-20.

discussions and that, in any event, it was understood that the President remained under the authority of the Assembly.

65. The following decisions were taken at the fourth session concerning these provisions. The Sixth Committee rejected by 26 votes to 7, with 8 abstentions, an amendment to delete the provision, proposed by the Special Committee, that the President might limit the time to be allowed to speakers in the debate on the inclusion in the agenda of items recommended by the General Committee; it rejected by 15 votes to 14, with 16 abstentions, a further amendment to include in the relevant rule a statement of the right of appeal against the President's ruling. 120/ It was the opinion of the Sixth Committee that the rejection of the latter amendment in no way deprived the Assembly of its power to overrule the President. Amendments to the rules to provide that the President might limit the time to be allowed to speakers on the adjournment or closure of debate, and on the suspension or adjournment of the meeting were approved. 121/ Similar amended rules were approved to apply to the Chairmen of committees. 122/

66. With regard to the amendment 123/ to the rules, proposed by the Special Committee, to the effect that the President (Chairman) might permit explanations of vote and might limit the time to be allowed for such explanations, the objection was raised in the Sixth Committee 124/ that representatives had a right to explain their votes, particularly if they had not already spoken in the debate. An amendment to provide that the President might only limit the time to be allowed for explanation to representatives who had already spoken in the debate was rejected by 20 votes to 8, with 8 abstentions, and the amended rule proposed by the Special Committee was approved by the Sixth Committee by 26 votes to 7, with 3 abstentions. In the plenary meeting, two further amendments 125/ were adopted: the first adopted by 36 votes to 6 with 9 abstentions, provided that there would not be explanations of vote on a secret ballot; and the second, adopted by 31 votes to 15, with 8 abstentions, provided that the proposer of a proposal or amendment would not be permitted to explain his vote.

67. The powers of presiding officers with regard to measures for limiting debate on the substance of a question are confined to their powers to propose such measures to the Assembly (or the committee). With regard to the general powers of the President (see paragraph 59 above) and the Chairmen of committees, the Special Committee proposed, 126/ at the fourth session of the Assembly, a further definition to enable the President (or the Chairman) "at any time and without any reflection on his impartiality, to draw members' attention to measures likely to expedite their proceedings." Accordingly, it was proposed that the President (or Chairman) might, in the course of the discussion of an item, propose to the Assembly (committee) the limitation of the time to be allowed to speakers, the limitation of the number of times each representative might speak on any question, the closure of the list of speakers or the closure of debate, as well as the suspension or the adjournment of the meeting or the adjournment of the debate on the item under discussion. It was

120/ G A (IV), 6th Com., 145th mtg., paras. 48 and 49; ibid., para. 53, A/C.6/L.13.

121/ G A (IV), 6th Com., 150th mtg., pp. 47 and 48.

122/ G A (IV), 151st mtg., p. 56.

123/ G A (IV), Suppl. No. 12, A/937, para. 32.

124/ G A (IV), 6th Com., 151st mtg., p. 48.

125/ G A (IV), Plen., 256th mtg., para. 154, A/1037/Rev.1.

126/ G A (IV), Suppl. No. 12, (A/937), para. 38.

pointed out during the discussions 127/ that the President (and Chairmen) already had these general powers, but certain representatives considered that a statement of these powers in the rules would strengthen the authority of the presiding officers. One representative 128/ voted for the amended rule on the understanding that the list of powers was not exclusive.

68. However, various representatives considered that this amendment, as well as the amendments to permit presiding officers to limit the time to be allowed to speakers in procedural debates (see paragraphs 64-66 above), gave them powers that should be retained by the Members of the Assembly. In order to make it clear that the balance of power was not upset, an amendment 129/ to add a general statement that "The President (Chairman), in the exercise of his functions, remains under the authority of the General Assembly (committee) " was submitted and adopted.

69. The rules, as amended at the fourth session, provide 130/ that "The General Assembly" or "The committee" may limit the time to be allowed to each speaker and the number of times each representative may speak on any question. In connexion with these rules, the Special Committee proposed an amendment which stated that when a debate was limited and a representative had spoken his allotted time, the President (Chairman) was to call him to order without delay. In the Sixth Committee, 131/ some representatives considered this provision obvious and superfluous, for there was no need to tell the President what he should do in case of violation of an adopted procedure. On the other hand, it was stated that the object of the provision was both to strengthen the hand of the President by obliging him to take certain action which he might otherwise be reluctant to take, and to make his position easier. A proposal to delete the sentence was rejected by 23 votes to 15, with 5 abstentions.

70. In his memorandum 132/ to the Assembly, at its seventh session, the Secretary-General stated that he believed that these rules would be applied more readily, where appropriate, if the initiating party were specified. He therefore proposed "the deletion of the broad term 'The General Assembly (Main Committee)' and the substitution of the phrase 'The President (Chairman) or any representative', on the understanding that this amendment would not affect other general or specific powers as granted to the presiding officers in the rules of procedure." "It is thought, further", the memorandum continued "that such initiative would be taken more readily if the mover knew in advance that his action would not lead to a long procedural debate". It was also proposed that the President (Chairman) as well as any representative might move the adjournment or closure of debate. 133/ The Secretary-General also proposed that a provision be added to the rules to state that when the debate on an item was concluded because there were no further speakers, the President (Chairman) was to declare the debate closed and that this was to have the same effect as closure by the consent of the General Assembly (committee).

127/ G A (IV), 6th Com., 145th and 146th mtgs., pp. 18-20.

128/ *Ibid.*, p. 19.

129/ G A (IV), 6th Com., 151st mtg., para. 11, A/G.6/L.14. For the discussion, see *ibid.*, paras. 8-52.

130/ Present rules 74 and 115.

131/ G A (IV), 6th Com., 150th mtg., paras. 37-69.

132/ G A (VII), Annexes, a.i. 50, pp. 2-7, A/2206, paras. 32 and 33.

133/ Rules 76 and 117, and rules 77 and 118.

71. During the discussions at the seventh session, 134/ opposition was expressed to these amendments and in particular to the last-mentioned proposal. The Sixth Committee stated in its report 135/ to the Assembly that some representatives participating in its work had expressed the opinion "that the amendments, if adopted, would limit freedom of speech and hamper discussion, without shortening the duration of the sessions. They felt that the rules of procedure of the General Assembly had to be considered in the light of the principles of the Charter. The Charter was based on the sovereign equality of States, and the rules of procedure, in guaranteeing freedom of speech to those States, simply reflected that principle." "Some representatives", the report further stated, "felt that the proposal for granting powers of initiative to the President of the General Assembly and the Chairmen of Main Committees with respect to procedural motions would give to the presiding officers powers extending beyond the normal function of directing debates and would enable them to influence the course of discussions." "Some representatives", it added, "considered that motions to limit the time to be allowed to each speaker and the number of times each representative might speak on a question were of such importance that no restrictions should be placed on their consideration".

72. Those representatives favouring the proposals, the Sixth Committee stated, in its report, 136/ "were confident that the presiding officers would not abuse their powers and would not be in a position to do so, as the ultimate decision on matters of procedure would continue to rest in each case with the Assembly or the Committee. The limitation of the number of speakers on motions to limit the time and the number of speakers in a debate was justified, in their opinion, by similar restrictions on debates which already existed with respect to other procedural motions."

73. A draft resolution, 137/ which was submitted to the Sixth Committee, proposed to include in the rules all the Secretary-General's suggested amendments except that relating to the closure of debate by the President or the Chairman; an amendment 138/ to the draft resolution which would also incorporate that proposal was withdrawn at the 351st meeting. The Sixth Committee recommended, however, and the General Assembly decided upon, 139/ the establishment of an ad hoc committee to consider the Secretary-General's report and any other relevant information communicated by Member States and to make recommendations at the eighth session.

74. This ad hoc committee, the Special Committee on Measures to Limit the Duration of Regular Sessions of the General Assembly, in its report endorsed only two of the amendments 140/ to the rules of procedure proposed by the Secretary-General in his memorandum. It stated 141/ that it had considered the proposal to replace in rules 73 and 113 (present rules 54 and 115) the broad term "The General Assembly (the committee)" by the phrase "The President (Chairman) or any representative", and

134/ G A (VII) Plen., 387th and 388th mtgs., pp. 135-162; G A (VII), 6th Com., 347th-353rd mtgs., pp. 235-272.

135/ G A (VII), Annexes, a.i. 50, pp. 14 and 15, A/2349, paras. 13 and 15.

136/ Ibid., para. 12.

137/ G A (VII), Annexes, a.i. 50, pp. 10 and 11, A/C.6/L.278.

138/ G A (VII), Annexes, a.i. 50, p. 12, A/C.6/L.282/Rev.1. The amendment stated that the President "may", instead of "shall" as in the original amendment, declare the debate closed.

139/ G A resolution 689 (VII).

140/ These amendments concerned the limitation of speakers under present rules 74 and 115 (see para. 84 below) and the composition of the General Committee.

141/ G A (VIII), Annexes, a.i. 54, pp. 2-7, A/2402, paras. 33, 34 and 37.

that the majority of its members agreed that these rules would be used more freely if the text indicated clearly who might propose a motion thereunder. The majority, it was stated, were also of the opinion that while explicit reference in these rules to the President and the Chairmen would not confer any right which they did not already possess under rules 35 and 106 (present rule 108), such a reference would help to overcome a certain hesitancy regarding the application of those rules which the present wording appeared to occasion. The same views prevailed in the Special Committee concerning similar modifications to rules 75 and 115 (present rule 116) and 76 and 116 (present rule 117). Some members of the Special Committee, however, objected in principle to the measures proposed because they believed that such measures would curtail the rights of Member States freely to express their views on items on the agenda of the Assembly.

75. In the discussions at the eighth session, 142/ the same objections, broadly speaking, to this recommended practice were put forward as had been expressed at the seventh session to the amendments to the rules proposed by the Secretary-General. A draft resolution 143/ was submitted which proposed that the Assembly (1) refer to the report of the Special Committee; (2) state that it recognized the importance of adopting measures calculated to limit the duration of its regular sessions, without restricting the right of Members to speak fully and freely in the debates in plenary meetings and in the various committees; (3) adopt the two specific amendments to its rules proposed by the Special Committee; and (4) annex to its rules of procedure the "outline of practices recommended by the Special Committee in its report". The proponent of the draft resolution stated 144/ that his delegation felt that a separate vote should be taken on each paragraph of the proposed annex so as to make it clear which practices recommended by the Special Committee were acceptable. An amendment 145/ to delete the paragraph of the draft resolution concerning an annex was, however, adopted in the Sixth Committee by 32 votes to 13, with 4 abstentions.

76. A further power 146/ of the President is to decide on points of order in accordance with the rules of procedure. It is provided that a representative may appeal against the President's ruling, that his appeal is to be put to the vote immediately and that the President's ruling is to stand unless overruled by a majority of the Members present and voting. "A representative rising to a point of order," it is further provided, "may not speak on the substance of the matter under discussion."

77. This last provision was inserted at the fourth session on the recommendation of the Special Committee on Methods and Procedures. 147/ During the discussions, 148/ certain representatives expressed the view that it would be difficult to distinguish between substance and points of order in every case, and in this connexion attention was called to the definition of points of order given in the Special Committee's report; it was suggested that some such definition might be included in the relevant rule, in a footnote to the rule or in a passage in the Committee's report to the Assembly. The suggestion was not, however, formally put forward. In his memorandum 149/ to the Assembly, at its seventh session, the Secretary-General proposed

142/ G A (VIII), 6th Com., 360th-366th mtgs., pp. 5-35.

143/ G A (VIII), Annexes, a.i. 54, pp. 7-9, A/C.6/L.292/Rev.1.

144/ G A (VIII), 6th Com., 366th mtg., para. 22.

145/ G A (VIII), Annexes, a.i. 54, p. 10, A/C.6/L.296.

146/ Rule 73. A similar rule, rule 114, applies to the Chairmen of committees.

147/ G A (IV), Suppl. No. 12, A/937, para. 37.

148/ G A (IV), 6th Com., 150th mtg., pp. 44 and 45.

149/ G A (VII), Annexes, a.i. 50, pp. 2-7, A/2206, paras. 36-41.

that a definition be included in the relevant rule to the effect that a point of order might relate only to such questions as lay within the competence of the President (Chairman). During the discussion, 150/ this was supported by some delegations as a useful clarification, but others considered that the proposed amendment was restrictive and would hamper proceedings and that it was impossible to define a point of order in advance since such points frequently arose out of the substance of the question under consideration. It was stated in reply 151/ that this argument confused procedural motions with points of order. Similar points concerning the definition and explanation suggested by the Special Committee were raised at the eighth session. 152/

5. Questions of competence

78. Rule 81 concerning decisions on competence in the General Assembly states:

"Subject to rule 79, 153/ any motion calling for a decision on the competence of the General Assembly to adopt a proposal submitted to it shall be put to the vote before a vote is taken on the proposal in question."

79. The rules adopted at the second session provided that a motion calling for a decision on competence should be put to the vote "immediately before a vote is taken on the proposal in question". At the fourth session, 154/ there was some discussion concerning the interpretation to be placed on these words. Some representatives held that the words implied that the vote on competence would have to take place before any discussion, and pointed out that it was not always possible to dissociate questions of competence from the substantive question involved. Other representatives interpreted the wording to mean that the vote on competence would take place immediately before the vote on the substantive proposal, but subsequent to the discussion. To avoid ambiguity, it was decided to delete the word "immediately". In its report to the Assembly, 155/ the Sixth Committee stated that its recommendation was intended to confirm the prevailing interpretation to the effect that motions on competence were to be discussed simultaneously with proposals on questions of substance but that motions on competence had to be voted on first.

80. As regards the phrasing of the rule concerning motions relating to the competence of committees which, as adopted at the second session, was identical with that applying to plenary meetings, the point was raised at the fourth session 156/ that the competence of the General Assembly was a matter that a committee had no right to decide. Moreover, it meant that there were two rules relating to the competence of the Assembly and none relating to the competence of a committee. It was proposed that the words "the General Assembly" in that rule should be replaced by the words "the committee". To this it was objected that the committees could not decide on

150/ G A (VII), 6th Com., 347th-353rd mtgs., pp. 235-272.

151/ Ibid.

152/ G A (VIII), Annexes, a.i. 54, pp. 2-7, A/2402, paras. 41 and 42.

153/ This rule gives precedence to certain procedural motions.

154/ G A (IV) 6th Com., 157th mtg., pp. 93-96.

155/ G A (IV), Annex, pp. 181-190, A/1026 and Corr.1, para. 33.

156/ G A (IV), 6th Com., 157th mtg., pp. 93-96.

their own competence, which was determined by the General Assembly itself; no committee could refuse to deal with a question referred to it by the General Assembly. As a compromise, it was decided that the rule 157/ should refer to "any motion calling for a decision on the competence of the General Assembly or of the committee ...".

6. Limitations on the right to speak

81. Most of the discussions in the General Assembly concerning proposed amendments to the rules have hinged on this question. On the one hand, it has been maintained that it was in the interests of the dignity and prestige of the Assembly to limit the duration of its sessions and so make possible the attendance at its sessions of eminent statesmen of all countries. On the other hand, it was asserted that the sovereign rights of Members to free expression of views and the rights and duties of the Assembly in regard to full discussion of the questions brought before it had to be maintained (see paragraphs 12-14 above).

82. In addition to the powers given to presiding officers to propose, or to place, certain limitations on the right to speak (see paragraphs 58-77 above), the rules contain various provisions restricting somewhat this right both with regard to discussions on the substance of items on the agenda and with regard to procedural discussions.

83. With regard to discussions on the substance of items, it is provided 158/ that the General Assembly may limit the time to be allowed to each speaker and the number of times each representative may speak on any question.

84. The original rule had provided that the Assembly might limit the time to be allowed to each speaker; at the fourth session, on the recommendation of the Special Committee, the provision for the limitation of the number of times each representative might speak on a question was added. In favour of the amended rule, it was concluded that its purpose was merely to safeguard against any abuse of the limitation of time. On the other hand, it was urged that representatives needed to speak repeatedly in order to reply to points which were made and by way of explanation. 159/ Proposals at the seventh and eighth sessions to facilitate application of this rule by providing that the President or any representative might move such limitations were not approved by the Assembly (see paragraphs 70-75 above). Amendments to this rule were also proposed, both in the memorandum of the Secretary-General to the Assembly at its seventh session 160/ and in the report of the Special Committee on Measures to Limit the Duration of Regular Sessions of the General Assembly at the eighth session, 161/ to add the provision that, in addition to the proposer of such a motion, "two representatives may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote". In favour of the proposed amendment, it was stated that, in line with similar provisions in other rules, it was intended to avoid lengthy procedural discussions. Against the proposed amendment, it was objected that it would seriously curtail freedom of speech. 162/ As stated above (see paragraph 73), the Assembly at its seventh session decided to appoint a committee to study the matter further. At the eighth session, the Sixth Committee decided, by

157/ See rule 122.

158/ Rule 74; rule 115 is concerned with committees.

159/ G A (IV), 6th Com., 150th mtg., pp. 45-47.

160/ G A (VII), Annexes, a.i. 50, pp. 2-7, A/2206, para. 32.

161/ G A (VIII), Annexes, a.i. 54, paras. 35 and 36.

162/ G A (VIII), 6th Com., 360th-365th mtgs., pp. 5-35.

24 votes to 21, with 3 abstentions, 163/ to delete the relevant paragraph of a draft resolution 164/ providing for the incorporation of this phrase in the rules.

85. The rules 165/ also provide that during the course of a debate the President may announce the list of speakers and, with the consent of the General Assembly, declare the list closed. He may, however, accord the right of reply to any Member if a speech delivered after he has declared the list closed makes this desirable. This provision was included in the rules, without discussion, at the second session, on the recommendation of the Committee on Procedures and Organization. 166/ The Committee stated that the new rule confirmed a procedure followed during previous sessions of the Assembly.

86. A further limitation on the right to speak is constituted by the provision 167/ that discussion of a report of a Main Committee in a plenary meeting of the Assembly shall take place if at least one third of the Members present and voting at the plenary meeting consider such a discussion to be necessary. Any proposal to this effect shall not be debated, but shall be immediately put to the vote. This provision occasioned considerable discussion at the fourth session (see paragraphs 52 and 53 above).

87. As regards restrictions on procedural discussions, the rules provide that the number of speakers shall be limited as follows: in debate on the inclusion of items in the agenda recommended by the General Committee, to three speakers in favour and three against; 168/ on adjournment of debate, to two speakers in favour and two against, in addition to the proposer of the motion; 169/ on closure of debate, to two speakers opposing the closure; 170/ and on motions for division of proposals or amendments, to two speakers in favour and two against. 171/ It is provided that a motion for suspension or adjournment of the meeting is not to be debated but is to be put immediately to the vote. 172/ The question of the limitation of the number of speakers under these rules has not given rise to significant debate.

7. Questions of quorum

88. No problems would appear to have arisen regarding the rule providing that a majority of the Members of the General Assembly shall constitute a quorum, which is the rule as originally proposed by the Preparatory Commission. 173/

89. As regards the rule applying to the quorum for committees, however, certain objections were expressed at the fourth session of the Assembly 174/ to the proposal of the Special Committee on Methods and Procedures that the rule be amended to state that the Chairman might declare a meeting open when one third of the members was present

163/ G A (VIII), 6th Com., 366th mtg., p. 35; G A (VIII), Annexes, a.i. 54, p. 9, A/C.6/L.295 and p. 10, A/C.6/L.296.

164/ G A (VIII), Annexes, a.i. 54, pp. 7-9, A/C.6/L.292/Rev.1.

165/ Rule 75; rule 116 is concerned with committees.

166/ G A (II), Plen., vol. II, p. 1455, annex 4 (A/388).

167/ Rule 68.

168/ Rule 23.

169/ Rule 76; rule 117 is concerned with committees.

170/ Rule 77; rule 118 is concerned with committees.

171/ Rule 91; rule 130 is concerned with committees.

172/ Rule 78; rule 119 is concerned with committees.

173/ Report of the Preparatory Commission of the United Nations, PC/20, 23 December 1945, p. 14, rule 56.

174/ G A (IV), 6th Com., 151st mtg., pp. 53-56.

but that a majority would still be required for a question to be put to the vote. It was stated that this placed undue emphasis on voting at the expense of discussion, whereas the main function of the United Nations was to consider and discuss problems. The Charter, it was stated, implied that more than half the members of a body should be considered a quorum. The view was also expressed that it was undesirable for members to participate in a vote without having taken part in the related discussions. On the other hand, it was stated that the establishment of the requirement of one third rather than of a majority for a quorum would enable a minority to ensure discussion of an item in which it was interested. To make it clear that a meeting could not begin with one third of the members and then continue even though certain of the members had left, an amended version 175/ of the rule was proposed and adopted providing that:

"One third of the members of a committee shall constitute a quorum. The presence of a majority of the members of the committee is, however, required for a question to be put to the vote."

There were 15 votes in favour, 12 against and 3 abstentions. This was adopted on the understanding 176/ that a majority was required for decisions on procedure as well as on substance.

8. Questions of participation

90. Neither the Charter nor the rules of procedure of the General Assembly provide specifically for the participation of non-member States in the discussions of the Assembly. Article 11 of the Charter, however, provides that the Assembly may consider matters brought before it by non-member States in accordance with Article 35 (2), and that paragraph, in turn, provides that a non-member State may bring to the attention of the Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the Charter. The rules of procedure 177/ of the Assembly accordingly provide for the inclusion of such items in the provisional agenda, but no such questions have been brought before the Assembly by non-member States.

91. Non-member States have, however, been invited to participate in meetings of the Main Committees of the Assembly in the discussion of items with which they were particularly concerned. Thus, Albania and Bulgaria were invited to appear before the First Committee during the second session in connexion with the consideration of the Greek question. On that occasion, the First Committee adopted a draft resolution 178/ inquiring whether Albania and Bulgaria were prepared to agree to apply the principles and rules of the Charter in the settlement of the Greek question. The two Governments replied 179/ that, although they were in general willing to respect the principles of the Charter, they refused to make a declaration to this effect as a condition of their invitation to participate in the discussion of the Greek question. The Committee then adopted a draft resolution 180/ stating that the two Governments "having failed to furnish a satisfactory reply to the request made to them by the First Committee, the latter has decided to hear the statements of the Bulgarian and Albanian delegations on the Greek question and requests them to place themselves at the disposal of the

175/ Ibid., p. 56, paras. 90 and 91.

176/ G A (IV), Annex, pp. 181-190, A/1026 and Corr.1, para. 43.

177/ Rule 13.

178/ G A (II), 1st Com., 60th mtg., p. 12; ibid., p. 593, annex 15e (A/C.1/194).

179/ G A (II), 1st Com., p. 594, annex 15f (A/C.1/197), and annex 15g (A/C.1/198).

180/ G A (II), 1st Com., 62nd mtg., p. 31; ibid., p. 596, annex 15i (A/C.1/200).

Committee in order to reply to any questions which may be put to them". The two Governments accepted the invitation 181/ and made statements before the Committee. 182/ At the second part of the third session, 183/ representatives of Bulgaria and Hungary and at the fourth session 184/ the representative of Romania, were invited to participate, without vote, in the consideration in the Ad Hoc Political Committee of the items relating to the observance of fundamental rights and freedoms in those countries. The invitations were, however, refused 185/ on the grounds that the matters were outside the competence of the United Nations.

92. That representatives of non-member States should be heard by the Assembly in committee rather than in plenary meeting was implied in a recommendation made by the Special Committee on Methods and Procedures and approved by the General Assembly at its fourth session 186/ that the consideration of matters in plenary meeting without reference to a committee would be especially appropriate in connexion with questions which did not require either the presence of representatives of non-member States or the hearing of testimony.

93. A particular case of the participation of a non-member State in the discussions of the General Assembly is that of Italy, which has participated in discussions of the Fourth Committee as the Administering Authority for the Trust Territory of Somaliland. At the fifth session of the Assembly, 187/ Italy was invited to participate, without vote, in the discussions of the draft Trusteeship Agreement for the Territory. At the sixth session, 188/ the Fourth Committee agreed to the request of Italy to be represented during the discussions both of the report of the Trusteeship Council and of the question of the full participation of Italy in the work of that Council. At the seventh and eighth sessions, 189/ the Committee agreed to Italy's request to be represented during the discussions of the report of the Trusteeship Council.

94. As regards the participation of non-member States in the election of the judges of the International Court of Justice, the rules of procedure 190/ provide that the election shall take place in accordance with the Statute of the Court. Article 4 of the Statute states that the conditions under which a State which is a party to the Statute of the Court but not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon the recommendation of the Security Council. These conditions, which were adopted by the General Assembly at its third session under resolution 264 (III), include a provision that such a non-member State is to participate in the General Assembly in electing the members of the Court in the same manner as the Members of the United Nations. At the third session Switzerland and at the sixth and eighth sessions both Switzerland and Liechtenstein participated in elections of members of the Court. No significant questions arose in the Assembly in this connexion.

181/ G A (II), 1st Com., p. 597, annex 15k (A/C.1/203) and annex 15l (A/C.1/204).

182/ G A (II), 1st Com., 64th mtg., pp. 41-47.

183/ G A (III/2), Ad Hoc Pol. Com., 34th mtg., p. 65.

184/ G A (IV), Ad Hoc Pol. Com., 7th mtg., p. 27.

185/ G A (III/2), Ad Hoc Pol. Com., Annexes, pp. 9 and 10, A/AC.24/57, and pp. 10 and 11, A/AC.24/58; G A (IV), Ad Hoc Pol. Com., 10th mtg., p. 39.

186/ G A resolution 362 (IV), annex II, para. 23.

187/ G A (V), 4th Com., 174th mtg., p. 195.

188/ G A (VI), 4th Com., 204th mtg., p. 19.

189/ G A (VII), Plen., 279th mtg., p. 201; G A (VIII), Plen., 377th mtg., p. 413.

190/ Rule 151.

95. In resolution 253 (III), the General Assembly requested the Secretary-General to invite the Secretary-General of the Organization of American States to be present as an observer at sessions of the General Assembly. In resolution 477 (V), the General Assembly requested the Secretary-General to invite the Secretary-General of the League of Arab States to attend sessions of the General Assembly as an observer. During the discussions at the third session, 191/ adoption of the former resolution was opposed on the ground that the status of observer had not been provided for in the Charter, nor had any decision been taken by the General Assembly to that effect. It was stated that, since the rules of the Assembly provided for public meetings, there was no need to make special provision for the presence of an observer in that case. At the fifth session, the Sixth Committee in its report 192/ noted the understanding of supporters of its relevant draft resolution that the invitation to be addressed to the Secretary-General of the League of Arab States did not imply that the Arab League was or was not a regional agency within the meaning of Chapter VIII of the Charter. It was also the sense of the Committee that such an invitation, being an act of courtesy, could not be construed as establishing a precedent which might bind the General Assembly in the future.

96. During the consideration of the item entitled "Admission of new Members to the United Nations, including the advisory opinion of the International Court of Justice" by the Assembly at the fifth session, a draft resolution 193/ was submitted which concerned the participation of certain non-member States in the General Assembly. In the preamble, the draft resolution stated that nine States, which had received the affirmative vote of nine members of the Security Council but had not been recommended for membership because of the opposition of one of the permanent members of the Council,

"while not yet Members of the United Nations can contribute very effectively to the work of the United Nations if they are given the opportunity of being heard in the General Assembly in matters connected with its fundamental obligation of maintaining international peace and security,".

Under the draft resolution, the Assembly would resolve:

"2. That the Secretary-General should invite each of the Governments of the States to which this resolution applies to send an observer to sessions of the General Assembly and its committees, including the Interim Committee, in order to enable them to express their views and furnish information whenever consulted by the delegation of any Member State; and

"3. That documents and letters sent by the said States to the Secretary-General for the information of the United Nations should be distributed to the delegations to the General Assembly or, if the Assembly is not in session, to the foreign offices of Member States and the permanent delegations to the United Nations".

97. During the discussions in the Assembly, 194/ doubts were expressed concerning the constitutionality of the proposal. No observer status was provided for in the Charter. Moreover, it was doubtful whether such an intermediate status was adequate for sovereign States and would be acceptable to the countries concerned. Further, it was

191/ G A (III/1), Plen., 151st mtg., p. 362.

192/ G A (V), Annexes, a.i. 58, p. 6, A/1442, para. 5.

193/ G A (V), Annexes, a.i. 19, pp. 3 and 4, A/1585.

194/ G A (V), Plen., vol. I, 318th mtg., pp. 565-587.

already the practice to invite non-member States to participate in discussions in the Assembly of matters of particular concern to them. The draft resolution was also opposed on the ground that, in singling out nine of the States whose applications were pending, it was discriminatory. In support of the draft resolution, it was urged that it would be a gesture of rapprochement which was not only not prohibited by the Charter but which was vitally necessary in the existing impasse and to bridge the gap between non-member States and the Organization. It would offer the States concerned an opportunity for co-operation which would be valuable to their Governments. It was not intended to offer them a substitute for membership; the draft resolution also provided for the reconsideration of their applications. All the States mentioned were those which, as the Assembly itself had previously determined, fulfilled the conditions of membership. The attendance of observers was nothing new; for example, invitations had been sent to the Secretary-General of the Organization of American States and to the Secretary-General of the League of Arab States.

98. To meet the contention that the contemplated invitation might not be acceptable, a modification in the wording was suggested 195/ to provide that, "pending admission to membership", each of the States concerned should be allowed an opportunity to send an observer to sessions of the General Assembly. The amendment was accepted by the sponsor.

99. The General Assembly rejected 196/ the relevant preambular paragraph of the draft resolution (see paragraph 96 above) by 20 votes to 7, with 22 abstentions. Operative paragraph 2, as amended, providing for the invitation to send observers, was rejected by 27 votes to 11, with 16 abstentions. Operative paragraph 3, providing for the circulation of documents, received 18 votes in favour, 15 against and 21 abstentions. The President ruled that, as the paragraph had financial implications, it required a two-thirds majority and it was therefore not adopted.

100. The agreements 197/ bringing the specialized agencies into relationship with the United Nations provide that representatives of the agencies are to be invited to attend meetings of the General Assembly for purposes of consultation, and to attend meetings of the Main Committees of the General Assembly when matters within the scope of their activities are under discussion and to participate, without vote, in such discussions. The administrative heads of certain of the agencies have addressed plenary meetings of the Assembly at the third, 198/ sixth 199/ and eighth sessions. 200/ The following are some instances of occasions on which representatives of the agencies have participated in meetings of the Main Committees of the General Assembly: representatives of the Food and Agriculture Organization of the United Nations and of the World Health Organization took part at the sixth session 201/ in the Second Committee's discussions of chapter II of the report of the Economic and

195/ G A (V), Plen., vol. I, 318th mtg., para. 272.

196/ Ibid., pp. 587 and 588.

197/ See the article relating to reciprocal representation of the agreement with each of the agencies. The wording of the article varies slightly, the most noticeable variation being that in the agreement with the Universal Postal Union where it is provided that representatives of the Union may participate without vote in the deliberations of the Main Committees of the General Assembly "with respect to items concerning the Union". (Agreements between the United Nations and the specialized agencies, United Nations Publications, Sales No. 1951.X.1).

198/ G A (III/1), Plen., 147th mtg., pp. 253-265.

199/ G A (VI), Plen., 337th mtg., pp. 35-41; 338th mtg., pp. 48-51.

200/ G A (VIII), Plen., 451st mtg., pp. 223 and 224.

201/ G A (VI), 2nd Com., 182nd mtg., p. 228; 183rd mtg., p. 235.

Social Council, in particular concerning a draft resolution on "Food and Famine"; a representative of the United Nations Educational, Scientific and Cultural Organization took part at the same session 202/ in the discussions of the Fifth Committee concerning the liquidation of the International Institute of Intellectual Co-operation; a representative of the Food and Agriculture Organization took part at the seventh session 203/ in the discussions of the Second Committee concerning the economic development of under-developed areas; and a representative of the International Labour Organisation took part at the eighth session 204/ in the discussions of the Third Committee concerning forced labour.

101. Representatives of other organizations have been heard by the General Assembly in committee on matters of particular concern to them. For example, at the first special session, hearings were granted in the First Committee to the Jewish Agency for Palestine and to the Arab Higher Committee. Representatives of these organizations made statements before the Committee and answered questions put to them. 205/

102. In this connexion, the Assembly had before it a draft resolution, 206/ proposed by the General Committee, to the effect that communications from the Jewish Agency for Palestine and other organizations requesting that they be permitted to express their views on the Palestine problem should be referred to the First Committee for its decision. A second draft resolution 207/ was submitted which would provide that representatives of the Jewish Agency for Palestine should be invited to appear before the plenary meeting of the Assembly for the purpose of stating their views on the question. During the discussions, 208/ the view was expressed that it was not in accordance with the Charter for non-governmental organizations to be heard by the Assembly. Indeed, the Charter only provided for the participation of non-member States in the case of disputes to which they were parties. To grant hearings to witnesses, would, furthermore, be contrary to parliamentary practice which normally provided for such action in committee and it would detract from the dignity of the Assembly. On the other hand, it was stated that there was nothing in the Charter to preclude the granting of hearings by the Assembly, that the practice of the United Nations was still too new for a precedent to have been established and that the Assembly should have before it the point of view of those most directly concerned. The Assembly rejected 209/ the second draft resolution and adopted resolution 104 (S-I), 210/ providing that the First Committee grant a hearing to the Jewish Agency for Palestine and that other communications of a similar character received from the Palestinian population be sent to that Committee.

103. The First Committee adopted a draft resolution 211/ deciding to grant a hearing to the Jewish Agency for Palestine and to the Arab Higher Committee. The Arab Higher

202/ G A (VI), 5th Com., 338th mtg., p. 328.

203/ G A (VII), 2nd Com., 202nd mtg., pp. 60 and 61; 226th mtg., p. 223.

204/ G A (VIII), 3rd Com., 531st mtg., pp. 280 and 281.

205/ G A (S-I), Main Committees, 1st Com., 50th mtg., pp. 108-116; 52nd mtg., pp. 178-181 and pp. 189-198; 54th mtg., pp. 251-259; 55th mtg., pp. 266-275.

206/ G A (S-I), Plen., p. 195, annex 10 (A/299).

207/ G A (S-I), Plen., 73rd mtg., p. 71.

208/ G A (S-I), Plen., 72nd-75th mtgs., pp. 65-113.

209/ G A (S-I), Plen., 75th mtg., pp. 114 and 115.

210/ For texts of draft resolutions and amendments withdrawn in favour of the draft adopted by the General Assembly as resolution 104 (S-I), see G A (S-I), Plen., pp. 195 and 196, annexes 11-15, A/300-A/304.

211/ G A (S-I), Main Committees, p. 367, annex 6 (A/C.1/151).

Committee, however, withdrew its request for a hearing, and representatives of the Arab States in the First Committee refused to participate in the discussion and in the voting on the ground that the General Assembly, which was a superior body to the First Committee, had discriminated against the Arabs of Palestine 212/ in inviting the Jewish Agency and in sending other requests for hearings to the First Committee. A draft resolution was then adopted by the First Committee 213/ proposing that a plenary meeting be called to consider a resolution providing that the First Committee grant a hearing to the Arab Higher Committee. The General Assembly, on the proposal of the President, adopted resolution 105 (S-1), affirming that the decision of the First Committee to grant a hearing to the Arab Higher Committee gave a correct interpretation of the Assembly's intention.

104. Representatives of the Jewish Agency for Palestine and the Arab Higher Committee were also invited 214/ to participate at the second regular session in the deliberations of the Ad Hoc Committee on the Palestinian Question and at the second special session in the discussions of the First Committee; they did so and made statements before the Committees.

105. During the consideration of the item entitled "The problem of the independence of Korea" at the second session of the Assembly, a draft resolution 215/ was submitted in the First Committee providing that, inasmuch as the Korean question was primarily a matter for the Korean people itself and concerned its freedom and independence, and could not be correctly and fairly resolved without the participation in the discussion of representatives of the indigenous population, the First Committee invite elected representatives of the Korean people from northern and southern Korea to take part in the discussion of the question.

106. During the discussions, 216/ while it was generally agreed in principle that the representatives of the Korean people should be consulted, it was objected that it was not practicable to invite them to participate in the discussions in the First Committee since this would involve undue delay. The question was also raised as to how the representatives who were to take part in the Committee's discussions of the Korean question would be chosen, since it had hitherto been impossible to reach agreement as to who were the true representatives of the Korean people and it had been objected that free elections were not possible in the presence of the occupation forces.

107. An amendment 217/ was accordingly submitted which provided for the establishment of a United Nations Temporary Commission on Korea to facilitate and expedite the participation of the representatives of the Korean people in the consideration of the Korean question, and to ensure that the Korean representatives were in fact duly elected by the Korean people and not mere appointees of the military authorities in Korea; the Commission was "to be present in Korea with right to travel, observe and consult throughout Korea".

212/ G A (S-I), Main Committees, 1st Com., 46th mtg., p. 8, A/C.1/145; ibid., 47th mtg., pp. 25-27 and 76-78, statements by Egypt, Iraq, Lebanon, Saudi Arabia and Syria.

213/ G A (S-I), Main Committees, 1st Com., 48th mtg., p. 105.

214/ G A (II), Ad Hoc Com. on the Palestinian question, 1st mtg., p. 2; G A (S-II), Main Committees, 1st Com., 118th mtg., p. 4.

215/ G A (II), 1st Com., p. 606, annex 16d (A/C.1/229).

216/ G A (II), 1st Com., 89th-91st mtgs., pp. 258-282.

217/ G A (II), 1st Com., p. 606, annex 16e (A/C.1/230).

108. In support of the draft resolution and in opposition to the amendment, it was maintained that, as a matter of principle, the United Nations should hear representatives of the Korean people before taking a decision concerning the question of Korean independence. It could be left to the Korean people themselves to decide on how to appoint their representatives. In the Palestine question, it was pointed out, the General Assembly had decided to hear non-governmental representatives of the people of Palestine (see paragraphs 102-104 above). To establish a commission to hear the representatives of the Korean people would only cause further delay.

109. It was objected that the amendment pertained to the substantive question and was not properly an amendment to the draft resolution, which itself dealt only with procedure. The Committee, however, by 43 votes to 6, with 4 abstentions, decided that it should be regarded as an amendment to the draft resolution. A draft resolution 218/ to provide that the First Committee discuss the amendment when it discussed the substance of the Korean question was rejected by 40 votes to 6, with 5 abstentions.

110. A further amendment 219/ to add to the above-mentioned amendment a provision that the elected representatives of the Korean people be invited to take part in the consideration of the Korean question "in the First Committee and at the plenary meeting of the General Assembly" was rejected by 36 votes to 6, with 9 abstentions.

111. The draft resolution, as amended, was adopted by the Committee in paragraph-by-paragraph votes. Before the voting, certain representatives 220/ declared that, as the Korean question could not properly be discussed without the participation of Korean representatives, they could not take part in the voting on the amendment.

112. The original draft resolution was also voted on and was rejected by 35 votes to 6, with 10 abstentions. The Committee also rejected, by 33 votes to 6, with 12 abstentions, another draft resolution 221/ which would have stated that the Committee considered it inexpedient to discuss the question in the First Committee and at the General Assembly without participation of the elected representatives of the Korean people, and therefore decided to defer consideration of the examination of the Korean question.

113. Subsequently, 222/ certain representatives did not take part in the voting on the draft resolution adopted by the First Committee on the substance of the question; they stated that they considered that the absence of elected representatives of the Korean people, at a time when questions affecting the independence of their country were being discussed, contravened the provisions of the Charter and the right of self-determination of peoples. Similar criticisms of the draft resolution were expressed in plenary meeting 223/ where, again, certain representatives stated that they would not take part in the vote, and one representative stated that his delegation would not and could not take part in the work of a commission such as had been proposed (see paragraph 107 above).

218/ G A (II), 1st Com., p. 607, annex 16h (A/C.1/233).

219/ G A (II), 1st Com., p. 608, annex 16i (A/C.1/234).

220/ G A (II), 1st Com., 91st mtg., pp. 279 and 280.

221/ G A (II), 1st Com., p. 608, annex 16j (A/C.1/235).

222/ G A (II), 1st Com., 94th mtg., p. 305.

223/ G A (II), Plen., vol. II, 111th mtg., pp. 823-838; 112th mtg., pp. 839-859.

114. At the third session, 224/ in connexion with its consideration of the report of the United Nations Temporary Commission on Korea, the First Committee rejected, by 34 votes to 6, with 8 abstentions, a draft resolution 225/ inviting the delegation of the Korean People's Democratic Republic to participate in the examination of the problem of the independence of Korea. It adopted by 39 votes to 6, with 1 abstention, a second draft resolution 226/ inviting the delegation of the Republic of Korea to participate, without the right to vote, in the debate in the First Committee on the Korean question. In favour of the first draft resolution, the representative character of the Democratic People's Republic of Korea was stressed and the representative character of the Government of the Republic of Korea was challenged. It was urged that the representatives of the Democratic People's Republic of Korea be invited so that all aspects of the question might be considered. In opposition to the first draft resolution, it was stated that the North Koreans had boycotted the Temporary Commission and had flouted the previous resolution of the Assembly, and that, since the Temporary Commission had only been able to observe the elections in South Korea, there was no guarantee that the Democratic People's Republic of Korea was truly representative.

115. At the fourth session, the Ad Hoc Political Committee similarly adopted 227/ a draft resolution 228/ inviting representatives of the Republic of Korea to participate in its discussions without the right to vote and rejected another draft resolution 229/ to extend a similar invitation to representatives of the Democratic People's Republic of Korea.

116. The Fourth Committee has also granted oral hearings to petitioners from Trust Territories, and representatives have addressed questions to the petitioners. For example, at the eighth session of the Assembly, the Fourth Committee heard a representative of the Ngao-Ekélé Community from the Cameroons under French administration, concerning the adjustment of the Community's land complaint; 230/ representatives of the Joint Togoland Congress, of the Parti Togolais du Progrès and of the All-Ewe Conference concerning the Ewe and Togoland unification problem; 231/ and of the Somali Youth League during consideration of the report of the Trusteeship Council on Somaliland under Italian administration. 232/

117. At the sixth session, 233/ the Fourth Committee, after having decided to grant hearings to certain chiefs and headmen of the Herero, Nama, and Berg Damara tribes "and/or other spokesmen designated by them" in connexion with its consideration of the question of South West Africa, decided to hear the Reverend Michael Scott, pending the arrival in Paris of the tribes' representatives and spokesmen. It was stated that it

224/ G A (III/1), 1st Com., 200th mtg., pp. 630-634; 229th mtg., pp. 936-946; 230th mtg., pp. 946-955.

225/ G A (III/1), 1st Com., Annexes, p. 45, A/C.1/367.

226/ G A (III/1), 1st Com., Annexes, p. 64, A/C.1/395.

227/ G A (IV), Ad Hoc Pol. Com., 2nd mtg., pp. 4-6; 3rd mtg., pp. 7 and 8.

228/ G A (IV), Ad Hoc Pol. Com., 2nd mtg., p. 4, A/AC.31/4.

229/ G A (IV), Ad Hoc Pol. Com., Annex, vol. 1, p. 67, A/AC.31/5.

230/ G A (VIII), 4th Com., 382nd mtg., pp. 446-448; 387th mtg., pp. 489-491.

231/ G A (VIII), 4th Com., 365th mtg., pp. 320-324; 366th mtg., pp. 325-331; 367th mtg., pp. 333-339; 368th mtg., pp. 341-347; 369th mtg., pp. 349-355; 370th mtg., pp. 357-363; 375th mtg., pp. 320-360; 376th mtg., pp. 403 and 408.

232/ G A (VIII), 4th Com., 377th mtg., pp. 414-416; 378th mtg., pp. 417-421; 379th mtg., pp. 423-426.

233/ G A (VI), 4th Com., 204th mtg., p. 19; 219th mtg., p. 107.

was unnecessary to adopt a further resolution to enable the Reverend Scott to address the Fourth Committee as a spokesman for the tribes, since this was already provided for in the Fourth Committee's resolution, and the question was then raised as to whether he would be addressing the Committee as an individual. The Chairman stated that he would be heard as a spokesman of the tribes. One delegation 234/ withdrew from the Fourth Committee's debate on the ground that its action in inviting the representatives of the tribes was unconstitutional, since the Charter only allowed petitioners from Trust Territories to be heard. The Fourth Committee's action was again criticized as unconstitutional on this ground in the General Assembly, 235/ and also on the ground that the Reverend Michael Scott was speaking as an individual. On the other hand, it was urged that the Assembly had the right and the duty to hear the representatives of the peoples concerned.

9. Suspension of the rules

118. At the fourth session of the General Assembly, 236/ it was suggested that a study might be made of ways of preventing, if necessary, an arbitrary suspension of the rules, and of the advisability of inserting a rule to that effect in the rules of procedure. The view was expressed that such a study might imply that the Sixth Committee approved to a certain extent the principle of the suspension of the application of the rules. Since it was inconceivable that the rules of procedure should contain a provision of that kind, it was maintained, such a study would be useless. The question did not arise again.

C. Election of the President of the General Assembly

1. Question of nominations

119. The question of nominations in connexion with the office of President arose at the first part of the first session, 237/ when one candidate was nominated and another was elected, without prior nomination, by 28 votes to 23. It was objected 238/ that this was unconstitutional, that a nomination should be discussed before a secret ballot was taken, and that, when two nominations were put forward, it was customary for one of them to be withdrawn in the interests of unanimity. Adoption by a majority reflected on the dignity of the Assembly and, to some extent, on the authority of the President. An amendment to the rules was proposed, to state that "each candidature must be brought forward at a meeting and be open to discussion before a vote is taken, except in cases where the Assembly decides unanimously to vote by acclamation". The amendment was referred to the Sixth Committee, and was referred by it to a Sub-Committee on Rules of Procedure. The Sub-Committee recommended 239/ the addition of new rules laying down a procedure for nominations, which allowed for nominations in writing as well as orally. An amendment was, however, adopted by the Sixth Committee 240/ by 22 votes to 21, with 8 delegations absent, to state that "There shall be no nominations". This amendment to the rules was adopted by the Assembly in plenary meeting 241/ by 25 votes to 18, with 8 delegations absent.

234/ G A (VI), Annexes, a.1. 36, pp. 18 and 19; A/C.4/196.

235/ G A (VI), Plen., 361st mtg., pp. 355-363; 362nd mtg., pp. 365-377.

236/ G A (IV), 6th Com., 158th mtg., p. 97.

237/ G A (I/1), Plen., 1st mtg., pp. 45 and 46.

238/ G A (I/1), Plen., 2nd mtg., pp. 57 and 58.

239/ G A (I/1), 6th Com., pp. 35-39, annex 2 b (A/C.6/9/Rev.1).

240/ G A (I/1), 6th Com., 4th mtg., p. 10.

241/ G A (I/1), Plen., 18th mtg., pp. 295 and 296.

120. During the discussions in plenary meeting, 242/ it was stated that the principle of nominations would result in lobbying, that it ran counter to the Charter provision for a secret ballot in all elections, and that it would cause embarrassment to discuss publicly the rival merits of various candidates. In favour of the principle, it was contended that to forbid nominations was undemocratic, and that Members had the basic right to make proposals on every matter within the competence of the General Assembly, that qualified candidates, particularly from small countries, might be insufficiently known, that to forbid nominations would lead to manoeuvres behind the scenes and would reflect on the prestige of the Assembly.

2. Election of Vice-Presidents

121. No provision exists in the Charter concerning the election of Vice-Presidents. Since the first election, 243/ it has been accepted that States rather than individuals should be elected to the Office of Vice-President. The provisional rules of procedure 244/ stated that the Assembly was to elect seven Vice-Presidents on the basis of ensuring the representative character of the General Committee. At the second session, 245/ following some discussion, it was decided to amend the rule to provide that the Vice-Presidents should be elected after the Chairmen of the Main Committees.

242/ G A (I/1), Plen., 2nd and 18th mtgs., pp. 62-64 and 279-291.

243/ G A (I/1), Plen., 3rd mtg., pp. 69 and 70.

244/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, p. 11, rule 26.

245/ G A (II), 6th Com., 56th mtg., p. 131.

ARTICLE 22

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TEXT OF ARTICLE 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

INTRODUCTORY NOTE

1. The General Assembly has established a large number of subsidiary organs which differ considerably in types of function, membership, duration and other respects. An attempt has therefore been made in the General Survey to give an over-all view of the different types of subsidiary body established by the Assembly. Since this view must necessarily be cursory, because of the number of organs and their many differences, a list of the subsidiary organs, classified in certain broad categories, is annexed to this study.
2. The Main Committees of the Assembly are not dealt with in this study. The question of whether these Committees should be considered as subsidiary organs or as an integral part of the Assembly is dealt with in this Repertory under Article 7.
3. Relatively few questions would appear to have arisen which directly concern the application of Article 22; the constitutional questions raised in connexion with the establishment of subsidiary organs in general related more closely to the application of other Articles of the Charter than to Article 22 itself. Such questions as have arisen related, broadly speaking, on the one hand to the scope of the powers of the Assembly in their bearing on the establishment of subsidiary organs and, on the other hand, to the scope of the powers to be given to the subsidiary organs themselves. As the two questions are closely connected, they have often been discussed together. The Analytical Summary of Practice devotes two of its three sections to these questions. The third section deals with the relationship of the subsidiary organs to other organs.

I. GENERAL SURVEY

4. The General Assembly, during its first eight regular and its two special sessions, has established almost a hundred subsidiary organs. They have varied considerably in the kinds of functions assigned to them, their duration, their type of membership, the method of appointing their members and the extent of the powers defined in their terms of reference. A list of these organs, with indications of the broad categories into which they fall in the foregoing respects, is annexed to this study.
5. Most of the subsidiary organs dealt with here have been established directly by resolution of the General Assembly. In certain instances, however, the Secretary-General has been requested or authorized to establish the organ; for example, at the first part of the first session the Assembly resolved ^{1/} that an "International Civil Service Commission shall be established by the Secretary-General". The resolution authorized him to appoint an advisory committee to draft a statute for an administrative tribunal and recommended that he appoint two advisory groups of experts. ^{2/} In another instance, a subsidiary organ of the General Assembly, the

^{1/} G A resolution 13 (I), para. 6.

^{2/} G A resolution 13 (I), paras. 11 and 18 and G A resolution 14 (I), para. 4.

Peace Observation Commission, was requested 3/ itself to establish a subsidiary body, a Balkan sub-commission, and the authority to be delegated to that subsidiary body was specified in the resolution of the Assembly.

6. Whereas the method of establishment has been, in nearly every case, by resolution of the General Assembly, the method of determining the membership of the subsidiary organs has been less uniform. In the cases of the Atomic Energy Commission and the Disarmament Commission, 4/ for example, the category of States designated for membership was stated in the resolution of the Assembly. In other cases, the Assembly has decided separately on the actual States or individuals to be members, on the proposal of the President or on the recommendation of a Main Committee, frequently adopted on the proposal of its Chairman. This has been the method followed for the majority of subsidiary organs the membership of which consists of States; it was also used in the first appointment 5/ of members of the United Nations Commission on the Racial Situation in the Union of South Africa, the membership of which consisted of individuals. In yet other instances, as in the case of the Conciliation Commission for Palestine, 6/ the Assembly has taken a decision on the appointment of the members of a body after having previously set up a committee to make a proposal concerning membership. As regards the membership of bodies composed of individuals, the Assembly has generally used a system of nomination and election, as in the case of the International Law Commission 7/ and of the Advisory Committee on Administrative and Budgetary Questions; the members of the latter are appointed by the Assembly on the recommendation of the Fifth Committee, following elections held in that Committee. In one instance, that of the Special Committee on the representation of China, 8/ the elective process was applied to States. In some cases, notably in those of the United Nations Commissioners in Libya and Eritrea, 9/ the elections were held on the basis of nominations made by a committee of the Assembly specially created for the purpose.

7. Sometimes the appointment of members of subsidiary bodies has been made indirectly; thus the General Assembly has asked that the appointments be made by its President (for example, in the case of its Negotiating Committees for Extra-Budgetary Funds appointed at successive sessions), 10/ by a committee of its members (in the case of the United Nations Mediator in Palestine) 11/ or by the Secretary-General (in the case of the United Nations Tribunals in Libya and Eritrea). 12/ The members of some bodies are appointed by other indirect means: for example, the members of the United Nations Joint Staff Pension Board are appointed by the United Nations Staff Pension Committee and the staff pension committees of the member organizations participating in the staff pension scheme. 13/

8. Sometimes a combination of the different methods of appointment has been used. For example, the various committees on information transmitted with regard to

3/ G A resolution 508 (VI).

4/ G A resolutions 1 (I) and 502 (VI).

5/ G A (VII), Plen., 411th mtg., p. 530.

6/ G A (III/1), Plen., 186th mtg., p. 1005.

7/ See articles 3-10 of the Statute of the International Law Commission, adopted by General Assembly resolution 174 (II).

8/ G A (V), Plen., vol. I, 321st mtg., p. 608.

9/ G A resolutions 289 B (IV) and 390 B (V).

10/ G A resolutions 393 (V), 410 (V), 571 B (VI), 607 (VI), 693 (VII) and 759 (VIII).

11/ G A resolution 186 (S-2).

12/ G A resolution 388 (V), article X, and G A resolution 530 (VI), article XI.

13/ See article 22 of the regulations for the United Nations Joint Staff Pension Fund, adopted by General Assembly resolution 248 (III).

Non-Self-Governing Territories have consisted of Members transmitting such information and of other members elected by the Fourth Committee on behalf of the Assembly. 14/ The United Nations Staff Pension Committee consists of some members elected by the General Assembly, some appointed by the Secretary-General and some elected by the participants in the Staff Pension Fund. 15/

9. Any classification of the subsidiary bodies of the Assembly according to the functions assigned to them must, to some extent, be arbitrary and admit of exceptions. Both the type of function and the degree of authority delegated to individual organs vary considerably. For convenience, however, these bodies have been divided into the following broad categories.

Study committees

10. The purpose of study committees is to prepare studies to facilitate consideration of certain matters by the General Assembly. Such committees have included the following: the Committees on International Criminal Jurisdiction, 16/ the Special Committee on Admission of New Members 17/ and the Collective Measures Committee. 18/ The Interim Committee falls within this group to the extent that its function has been to "consider and report" to the Assembly. However, certain of its assigned functions have exceeded that of study. Some of these have been general functions in connexion with which it might, within certain limitations, conduct investigations and appoint commissions of inquiry, 19/ request advisory opinions from the International Court of Justice 20/ and utilize the Peace Observation Commission; 21/ others have been particular functions in connexion with which it might be consulted by the Temporary Commission on Korea, 22/ by the Commission on Korea 23/ and by the Special Committee on the Balkans, 24/ and it was to consider the report of the United Nations Commission for Eritrea. 25/

11. The studies and reports are usually to be made to the General Assembly, though in certain cases, as in that of the Atomic Energy Commission, 26/ it was provided that the studies were to be transmitted to other organs or, as in the case of the Ad Hoc Commission on Prisoners of War, 27/ to the Secretary-General for transmission to Members. In some cases the function of study is coupled with the function of making proposals to the General Assembly, or even, as in the case of the Disarmament Commission, 28/ to a conference of States to be convened on the decision of the subsidiary organ.

14/ G A resolutions 66 (I), 146 (II), 219 (III), 332 (IV) and 646 (VII).

15/ Article 20 of the regulations for the United Nations Joint Staff Pension Fund.

16/ G A resolutions 489 (V) and 687 (VII).

17/ G A resolution 620 A (VIII).

18/ G A resolution 377 A (V).

19/ G A resolution 111 (II).

20/ G A resolution 196 (III).

21/ G A resolution 377 A (V).

22/ G A resolution 112 B (II).

23/ G A resolution 195 (III).

24/ G A resolution 193 (III).

25/ G A resolution 289 A (IV).

26/ G A resolution 1 (I).

27/ G A resolution 427 (V).

28/ G A resolution 502 (VI).

Political commissions and organs having active political responsibilities

12. These responsibilities are often combined with duties of study and report. The function of these bodies may be primarily that of investigation and report, as in the case of the United Nations Special Committee on Palestine 29/ and of the United Nations Commission to investigate Conditions for Free Elections in Germany. 30/ Again, their primary function may be to furnish assistance in establishing a form of government: in Libya it has included the establishment of a government; 31/ in Eritrea it has been the establishment of a Federation; 32/ and in Korea it has been the observation of elections. 33/ Mediation and conciliation may be a principal function, as it has been for the United Nations Mediator in Palestine 34/ and for the Conciliation Commission for Palestine. 35/ Again, a principal function may be observation as a means of maintaining peace, as for the United Nations Special Committee on the Balkans 36/ and the Balkan Sub-Commission of the Peace Observation Commission, 37/ or arranging and assisting in negotiations between Governments as in the case of the United Nations Good Offices Commission in connexion with the question of the treatment of people of Indian origin in the Union of South Africa. 38/

13. A number of these bodies have been given a certain degree of power to take decisions without being required to refer them back to the General Assembly. For example, the United Nations Commissioner in Libya 39/ was appointed "for the purpose of assisting the people of Libya in the formulation of the constitution and the establishment of an independent Government"; he was authorized to appoint, after consultation, the members of his Advisory Council representing the regions and minorities of Libya. The United Nations Special Committee on the Balkans was authorized 40/ to determine its own procedure and to establish such sub-committees as it thought necessary to perform its functions in connexion with the compliance, by the four Governments concerned, with the recommendations of the Assembly. Subsequently, the Committee was specifically instructed 41/ "to continue to utilize observation groups". The Conciliation Commission for Palestine was instructed 42/ "to take steps to assist the Governments and authorities concerned to achieve a final settlement" of outstanding questions and "to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation". It was specifically authorized to appoint a United Nations

29/ G A resolution 106 (S-1).

30/ G A resolution 510 (VI).

31/ G A resolution 289 Z (IV).

32/ G A resolution 390 A (V).

33/ G A resolution 112 (II).

34/ G A resolution 186 (S-2).

35/ G A resolution 194 (III).

36/ G A resolutions 109 (II), 193 (III), 288 (IV), and 382 B (V).

37/ G A resolution 508 B (VI).

38/ G A resolutions 615 (VII) and 719 (VIII).

39/ G A resolution 289 A (IV).

40/ G A resolution 109 (II).

41/ G A resolution 193 (III).

42/ G A resolution 194 (III).

representative to co-operate with the local authorities with respect to the interim administration of the Jerusalem area, as well as to appoint such subsidiary bodies and to employ such technical experts as it deemed necessary.

Organs of administrative assistance

14. Organs of administrative assistance were established by the Assembly to assist it in carrying out its functions relating to financial, budgetary and administrative matters. Examples of such organs are: the Advisory Committee on Administrative and Budgetary Questions, ^{43/} the Committee on Contributions ^{44/} and the Negotiating Committee for Extra-Budgetary Funds. ^{45/} Such committees as the Headquarters Advisory Committee, ^{46/} set up to advise the Secretary-General in the exercise of certain of his administrative functions, may also be placed in this category.

15. The main function of most of these organs is to study, to advise and to report, but in some cases they have the power to take final action. Thus, the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions is required for the transfer of credits between sections of the budget and, in certain instances, for withdrawals from the Working Capital Fund, and for commitments entered into by the Secretary-General to meet unforeseen and extraordinary expenses. ^{47/} The United Nations Joint Staff Pension Board has power to take final decisions regarding the admission of participants and the granting of benefits under the pension scheme; it may, moreover, delegate these powers, with the exception of the power to certify the payment of benefits, to the United Nations Staff Pension Committee and the staff pension committees of the member organizations. ^{48/}

Operational agencies

16. The purpose of operational agencies is to administer relief, rehabilitation and assistance programmes financed by voluntary contributions outside the regular budget of the United Nations. Such agencies include ^{49/} the United Nations Children's Fund (UNICEF), ^{50/} the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), ^{51/} the United Nations Korean Reconstruction Agency (UNKRA) ^{52/} and the Office of the United Nations High Commissioner for Refugees. ^{53/}

17. The operational agencies have several distinctive features in respect of organization and structure, functions and powers, and financing.

^{43/} G A resolution 14 (I).

^{44/} Ibid.

^{45/} G A resolutions 393 (V), 410 (V), 571 B (VI), 607 (VI), 693 (VII), and 759 (VIII).

^{46/} G A resolution 182 (II).

^{47/} See, for example, G A resolutions 787 (VIII) and 788 (VIII).

^{48/} G A resolution 248 (III).

^{49/} The Technical Assistance Board (TAB) should also be classified as an operational agency. Having been established by the Economic and Social Council, the TAB is dealt with in this Repertory under Article 68.

^{50/} General Assembly resolution 57 (I) established this agency as the United Nations International Children's Emergency Fund; the title was changed by resolution 802 (VIII).

^{51/} G A resolution 302 (IV).

^{52/} G A resolution 410 (V).

^{53/} G A resolution 428 (V).

18. As regards organization and structure, each of these agencies has a secretariat consisting of an executive head and his staff, and a governmental committee or board empowered to give directives or advice to the executive head in the performance of the agency's duties.

19. The Executive Director of UNICEF, the Director of UNRWA and the Agent General of UNKRA are appointed by the Secretary-General in consultation with the appropriate organ of the agency concerned. ^{54/} The High Commissioner for Refugees is elected by the General Assembly on the nomination of the Secretary-General. The staffs are appointed by, and report to, the executive head of the respective agency.

20. As regards the responsibility of the executive heads in the administration of the agencies' programmes, it was expressly provided in General Assembly resolutions 302 (IV) and 410 (V) respectively that the Director of UNRWA and the Agent General of UNKRA are responsible to the General Assembly. The High Commissioner for Refugees is required to follow policy directives given to him by the General Assembly or by the Economic and Social Council, and to report annually to the Assembly through the Council. ^{55/} The Executive Director of UNICEF is required to act in accordance with the policies laid down by the Executive Board ^{56/} but is generally under the administrative supervision of the Secretary-General.

21. The role and composition of the governmental committee or board varies with each agency. The Executive Board of UNICEF consists of the Governments of the States represented on the Social Commission of the Economic and Social Council and the Governments of eight other States, not necessarily Members of the United Nations, designated by the Council. ^{57/} Under resolution 57 (I), the Executive Board has been empowered to establish the policies of UNICEF, including the determination of programmes and the allocation of funds, in accordance with such principles as may be laid down by the Economic and Social Council and its Social Commission.

22. The Advisory Commission of UNRWA, consisting of not more than nine Members ^{58/} was established to advise and assist the Director in the execution of the programme of aid to Palestine refugees.

23. With respect to UNKRA, the General Assembly, by resolution 410 (V), conferred upon a second organ, the United Nations Commission for the Unification and Rehabilitation of Korea, consisting of seven Members, certain supervisory and advisory powers, and established an Advisory Committee, consisting of representatives of five Member States, to advise the Agent General of UNKRA.

24. The Statute of the Office of the High Commissioner for Refugees authorized the Economic and Social Council to establish an advisory committee, and by resolution 393 (XIII) the United Nations High Commissioner's Advisory Committee on Refugees, with a membership of fifteen States, was established by the Council. At its 837th meeting on 31 March 1955 (nineteenth session), the Council adopted a resolution whereby the Advisory Committee was reconstituted as the United Nations Refugee Fund (UNREF) Executive Committee, consisting of twenty Members. That Committee was

^{54/} The Executive Board for UNICEF, the Advisory Commission for UNRWA and the Advisory Committee for UNKRA.

^{55/} Statute of the Office of the High Commissioner for Refugees adopted by General Assembly resolution 428 (V).

^{56/} G A resolution 57 (I).

^{57/} G A resolution 417 (V).

^{58/} G A resolution 720 B (VIII).

empowered to give policy directives to the High Commissioner with respect to the UNREF programme, and to advise the High Commissioner, at his request, in the exercise of his functions under the Statute.

25. So far as functions and powers are concerned, the operational agencies have been entrusted with the task of executing programmes of relief, rehabilitation and other forms of assistance by furnishing supplies and services to Governments or directly to the peoples concerned. In carrying out their mandate, these subsidiary organs have the authority to make final decisions within their terms of reference. Their legal powers include the authority to enter into contracts, to sue, to acquire, hold and transfer property, and to take any other legal action required in the performance of their functions. 59/

26. The operational agencies are financed by voluntary contributions from Governments (and, in the case of UNICEF and of the Office of the High Commissioner for Refugees, from other sources as well) and not by assessments under the regular budget of the Organization. 60/

27. The authority of these agencies to take final action in administering the relevant programmes includes broad powers for the disposition of funds. The Executive Board of UNICEF has the power 61/ to allocate the resources of UNICEF as well as to determine its programmes. The Agent General of UNKRA is authorized 62/ to use contributions in kind or services, at his discretion, for the programme of relief and rehabilitation and for administrative expenses connected therewith. The United Nations High Commissioner for Refugees is authorized 63/ to administer any funds, public or private, which he receives for assistance to refugees, and to distribute them among the private and, as appropriate, public agencies which he deems best qualified to administer such assistance. With regard to UNRWA, the General Assembly has set the over-all limits of the programme for given periods 64/ and has specified the amounts to be made available for sub-programmes of direct relief for Palestine refugees, work projects and reintegration. The Agency has, however, been authorized to transfer funds between the sub-programmes, and at the sixth session the Assembly specifically authorized it "to transfer funds allocated for relief to reintegration".

Judicial bodies

28. Three judicial bodies have been established by the General Assembly: the United Nations Tribunals in Libya and Eritrea, and the Administrative Tribunal. The terms of reference of the Tribunals in Libya and Eritrea 65/ are, broadly speaking, to

59/ The legal powers of UNICEF have been expressly set forth in paragraph 2(a) of General Assembly resolution 57 (I). Although no similar provision is contained in the resolutions concerning UNRWA, UNKRA and the High Commissioner for Refugees, those agencies have, in fact, exercised similar powers.

60/ With the exception of the administrative expenses of the Office of the High Commissioner for Refugees, which are included in the regular budget of the United Nations.

61/ G A resolutions 57 (I) and 417 (V).

62/ G A resolution 410 (V).

63/ G A resolution 428 (V).

64/ G A resolutions 302 (IV), 393 (V), 513 (VI), 614 (VII) and 720 (VIII).

65/ G A resolution 388 A (V), article X, and G A resolution 530 (VI), article XI.

give to the authorities concerned, upon their request, such instructions as may be required to give effect to the relevant General Assembly resolution and to decide all disputes between those authorities regarding the interpretation and application of the resolution. It was specified that the decisions of both Tribunals should be final and binding and might be taken by majority vote. In the case of the Tribunal in Eritrea, it was further specified that it was to have "exclusive competence on matters falling within its functions".

29. The United Nations Administrative Tribunal was established 66/ with competence to hear and to pass judgement upon applications alleging non-observance of contracts of employment of staff members of the United Nations Secretariat or of their terms of appointment. In the event of any dispute as to whether the Tribunal has competence, the Statute of the Tribunal provides that the matter is to be settled by decision of the Tribunal. By special agreement the competence of the Tribunal may be extended to the specialized agencies. The Statute provides that the judgements of the Tribunal shall be final and without appeal and shall be taken by majority vote. There is a specific provision that the Statute may be amended by decision of the General Assembly.

Other organs

30. Some of the subsidiary organs of the Assembly do not fall readily into any of the five categories listed above. For example, the International Law Commission, a "study committee" in that it considers and recommends to the General Assembly topics within the realm of international law for codification, has, under its Statute, 67/ wide powers in respect of the progressive development of international law. The Ad Hoc Committee on the United Nations Relief and Rehabilitation Administration (UNRRA), 68/ though it may be described as an administrative assistance organ, was established primarily to obtain additional contributions to a body outside the United Nations, namely UNRRA.

Membership of subsidiary organs

31. The subsidiary bodies vary also in their type of membership. Where the membership consists of States, it may include all Member States, as in the case of the Interim Committee, or a certain category of States, as in the case of the Disarmament Commission, or certain States named in the resolution establishing the subsidiary organ, as is the case in the majority of instances. Alternatively, the subsidiary bodies may be composed of experts, serving in an individual capacity, as in the case of the International Law Commission, or may consist of a single individual, for example, the United Nations Mediator in Palestine and the United Nations Commissioners in Libya and Eritrea.

32. In the case of experts, it is frequently specified that particular considerations are to be taken into account in their selection, such as geographical distribution, as in the cases of the Advisory Committee on Administrative and Budgetary Questions and the Conciliation Commission for Palestine; or that particular qualifications are to be borne in mind, as in the cases of the International Law Commission and the United Nations Tribunals in Libya and Eritrea. In some cases, where the membership of a subsidiary body has consisted of states, these have been requested to designate specially qualified representatives - as with the Special Technical Committee on

66/ G A resolution 351 (IV).

67/ G A resolution 174 (II).

68/ G A resolution 6 (I).

Relief Needs after the Termination of UNRRA 69/ and the Special Committee on a United Nations Guard. 70/

Duration of subsidiary organs

33. The subsidiary organs of the Assembly have sometimes been established on a "permanent" or standing basis; such are the Advisory Committee, the Board of Auditors 71/ and the International Law Commission. In some cases, they have been established for an indefinite period, for example, the United Nations Commission for the Unification and Rehabilitation of Korea and the United Nations Korean Reconstruction Agency. More often, such bodies have been established for a specified period or for the accomplishment of a particular task of limited duration. In the latter case, the subsidiary organs have, as a rule, been asked to report to the next or to a succeeding session of the General Assembly. In some instances, as in that of the Committee on the draft Convention on Freedom of Information, 72/ a date on which the Committee was to transmit its report was specified; in others, for example, that of the Ad Hoc Committee on Factors (Non-Self-Governing Territories), 73/ the date on which the Committee was to begin its work was prescribed.

34. As regards the termination of these bodies, the Assembly has sometimes, as in the cases of the Atomic Energy Commission 74/ and the United Nations Special Committee on the Balkans, 75/ dissolved the body concerned specifically by resolution. In other cases, as in that of the United Nations Mediator in Palestine 76/ and the United Nations Temporary Commission on Korea, 77/ the Assembly has replaced the earlier organ by another. In some instances, the Assembly appears to have considered an organ to have automatically ceased to exist upon the fulfilment of the particular purpose for which it was created.

35. The practice of the Assembly in continuing organs established for a particular purpose or for a limited period has also not been uniform. Sometimes, as in the case of the United Nations Special Committee on the Balkans 78/ and of the Headquarters Advisory Committee, 79/ it has continued the same body in existence from session to session; at other times, as in the case of the Negotiating Committees for Extra-Budgetary Funds 80/ and the earlier Committees on Information Transmitted under Article 73 e, 81/ it has established new committees with similar terms of reference at successive sessions.

69/ G A resolution 48 (I).

70/ G A resolution 270 (III).

71/ G A resolution 74 (I).

72/ G A resolution 426 (V).

73/ G A resolution 567 (VI).

74/ G A resolution 502 (VI).

75/ G A resolution 508 A (VI).

76/ General Assembly resolution 194 (III), establishing the United Nations Conciliator Commission for Palestine, which was "to assume, in so far as it considers necessary in existing circumstances, the functions given to the United Nations Mediator ... by resolution 186 (S-2)".

77/ General Assembly resolution 195 (III), establishing the United Nations Commission on Korea which was to "be regarded as having superseded the Temporary Commission".

78/ G A resolutions 193 A (III), 288 A (IV) and 382 B (V).

79/ G A resolutions 242 (III), 350 (IV), 461 (V) and 589 (VI).

80/ G A resolutions 393 (V), 410 B (V), 571 B (VI), 607 (VI), 693 (VII) and 759 (VIII).

81/ G A resolutions 66 (I), 146 (II), 219 (III) and 332 (IV).

Place of meeting of subsidiary organs

36. As a rule, the place of meeting of the subsidiary bodies of the Assembly has not been specified in the resolutions creating them; it appears to have been assumed that they would normally meet at United Nations Headquarters. This was actually laid down in some cases, as in those of the Interim Committee on Korea, 82/ the Committee on the draft Convention on Freedom of Information 83/ and the 1953 Committee on International Criminal Jurisdiction. 84/ Sometimes a body which was to meet at Headquarters has also been authorized to meet elsewhere: the International Law Commission, according to its Statute, 85/ may meet elsewhere than at Headquarters after consultation with the Secretary-General; the Advisory Committee to the Agent-General of the United Nations Korean Reconstruction Agency 86/ may also meet elsewhere if it deems it essential to the proper performance of its work. Two bodies were established with headquarters or meeting place in Geneva: the Office of the United Nations High Commissioner for Refugees, 87/ and the 1953 Committee on International Criminal Jurisdiction. 88/

37. In a number of cases, it has been specifically provided that the headquarters or place of meeting of subsidiary bodies, particularly those of a political nature, should be in the areas with which they are concerned. Such cases include: the United Nations Special Committee on the Balkans, the United Nations Commission for Eritrea, the United Nations Commission on Korea and the United Nations Advisory Council for the Trust Territory of Somaliland under Italian Administration. 89/ The Tribunals for Libya and for Eritrea were to have their seats in those territories. 90/ In some instances, although no place of meeting or headquarters was specified, as in the case of the United Nations Mediator in Palestine, 91/ it was clear from the resolution that the subsidiary organ concerned was to operate in the field.

38. Sometimes it has been specifically stated that the Secretary-General should determine the place of the meeting, for example, in the case of the Special Committee on Information Transmitted under Article 73 e of the Charter, established by resolution 219 (III).

Method of reporting

39. The majority of the subsidiary bodies of the Assembly have been requested or recommended to report direct to the Assembly. In some instances, however, they have been asked to report to other organs or to the General Assembly through other organs. Thus, the Atomic Energy Commission was directed to report 92/ to the Security Council, which, "in appropriate cases", was to transmit these reports to the Assembly, to Members of the United Nations and to other organs; the Disarmament Commission and

82/ G A resolution 376 (V).

83/ G A resolution 426 (V).

84/ G A resolution 697 (VII).

85/ G A resolution 174 (II), Article 12 of the Statute annexed thereto.

86/ G A resolution 410 A (V).

87/ G A resolution 428 (V), para. 19 of the Statute annexed thereto.

88/ G A resolution 489 (V).

89/ G A resolutions 109 (II), 289 A (IV) and 195 (III).

90/ G A resolutions 388 A (V), article X and 530 (VI), article XI.

91/ G A resolution 186 (S-2).

92/ G A resolution 1 (I).

the Collective Measures Committee were to report 93/ both to the Security Council and to the General Assembly. The Committee on the draft Convention on Freedom of Information and UNICEF were to report 94/ to the Economic and Social Council and the United Nations High Commissioner for Refugees was to report 95/ to the Assembly through the Council. The Special Rapporteur on the question of establishing a special United Nations fund for economic development was to report 96/ both to the Assembly and to the Economic and Social Council. The Sub-Committee on the Questionnaire formulated by the Trusteeship Council was to report 97/ to the Trusteeship Council.

40. On various occasions, subsidiary organs have been asked to report to the Secretary-General, as in the case of the United Nations Commissioner in Libya, 98/ or to the Secretary-General for transmission to Members, as in the case of the Conciliation Commission for Palestine and the Ad Hoc Commission on Prisoners of War, 99/ or to the General Assembly through the Secretary-General, as in the case of the Agent General of UNKRA. 100/

41. Sometimes the Secretary-General has been requested to report personally on the work of the subsidiary organ, as in the case of the Standing Committee on the Repatriation of Greek Children. 101/

42. In some instances, as in the case of the United Nations Mediator in Palestine and the United Nations Commission to Investigate Conditions for Free Elections in Germany, 102/ where the reports were to be considered by other authorities (in the former case, by the Security Council and in the latter, by the four Powers involved), these reports were to be transmitted to the Secretary-General "for the information of Members". At other times, for example, in the case of the Special Committee on Measures to Limit the Duration of Regular Sessions of the General Assembly, 103/ the Secretary-General was requested to transmit the report to Members for comment prior to its consideration by the General Assembly.

43. Sometimes an organ, for example the United Nations Commission on Korea or the United Nations Commission for the Unification and Rehabilitation of Korea, 104/ has been asked to render "such interim reports as it may deem appropriate" to the Secretary-General for transmission to Members, in addition to its annual report to the General Assembly.

93/ G A resolutions 502 (VI) and 377 A (V).

94/ G A resolutions 57 (I) and 426 (V).

95/ G A resolution 428 (V), para. 11 of the Statute of the Office of the High Commissioner for Refugees, annexed thereto.

96/ G A resolution 724 B (VIII).

97/ G A resolution 751 (VIII).

98/ G A resolution 289 A (IV).

99/ G A resolutions 194 (III) and 427 (V).

100/ G A resolution 410 (V).

101/ G A resolution 382 C (V).

102/ G A resolutions 186 (S-2) and 510 (VI).

103/ G A resolution 639 (VII).

104/ G A resolutions 195 (III) and 376 (V).

44. In the case of certain organs, no provision has been made for reporting. This would seem to have occurred principally in connexion with three kinds of bodies: (1) those which are mainly advisory in character and are concerned with matters on which another organ or the Secretary-General is to report, for example, the Headquarters Advisory Committee, originally established under resolution 100 (I); (2) judicial bodies; and (3) certain standing bodies and panels which may or may not be called upon to function, such as the Peace Observation Commission and the Panel for Inquiry and Conciliation.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the scope of the powers of the General Assembly

45. The limits on the power of the General Assembly to establish subsidiary organs have been discussed in various connexions. Among the principal questions at issue have been: (1) whether the General Assembly possessed the functions in furtherance of which the subsidiary organ was to be established; (2) whether the Charter, in conferring powers to principal organs other than the General Assembly, set limits on the powers which could be assigned to a subsidiary organ of the latter; and (3) whether the Assembly, with a view to discharging its responsibilities under the Charter, could establish subsidiary organs to perform functions not specifically assigned to the Assembly.

1. *The Interim Committee*

46. During the discussions in the First Committee at the second session, ^{105/} objections were raised to the establishment of the Interim Committee on the ground that the functions proposed for it were those which properly belonged not to the General Assembly but to the Security Council, which, it was held, the Committee was intended to supplant; the Charter did not confer the right to establish subsidiary organs encroaching on the functions of the principal organs. It had been proposed that the Interim Committee should be entitled to consider and make recommendations on its own initiative concerning situations falling under Articles 11 and 14. But, it was contended, Article 11 provided that when definite measures for the solution of a problem were to be taken the matter was to be submitted to the Security Council, if necessary, even before it had been discussed, and the use of the Interim Committee as a substitute for the Council would be contrary to that provision of the Charter. It had also been proposed that the Interim Committee should be empowered to conduct investigations and to appoint commissions of inquiry within the scope of its duties, if it considered this useful and necessary. It was, however, objected that this was a function of the Security Council, and even the Council could only investigate disputes or situations with a specific aim, namely, to establish whether these disputes or situations were likely to endanger the maintenance of international peace and security.

47. On the other hand, the view was expressed that the Assembly, as well as the Security Council, had certain functions in relation to the maintenance of international peace and security and the Assembly was entitled to create a subsidiary organ to assist it in performing these functions. As regarded the powers of investigation to be given to the Interim Committee, the Assembly was entitled to apprise itself of the facts before making recommendations on the questions brought before it.

48. In order to meet some of the objections raised during the discussions in the First Committee, certain additional limitations were inserted in a draft resolution which the Committee recommended for adoption by the Assembly. It was adopted by the Assembly as resolution 111 (II). It was specified therein that a dispute or situation to be considered by the Interim Committee had to be proposed by Member States for inclusion in the agenda of the Assembly or brought before the Assembly by the Security Council, and that the Interim Committee must previously determine the matter to be both important and requiring preliminary study. Except in the case of matters referred to the Committee by the Security Council, this determination was to be made by a majority

^{105/} G A (II), Plen., vol. II, 110th mtg., pp. 753-804; 111th mtg., pp. 805-822; *ibid.*, 1st Com., 74th-78th mtgs., pp. 129-179; 94th-97th mtgs., pp. 307-336.

of two thirds of the Members present and voting. A two-thirds majority was also to be required for decisions to conduct investigations and appoint commissions of inquiry. It was further provided that an investigation or inquiry elsewhere than at United Nations Headquarters was not to be conducted without the consent of the State or States in whose territory it was to take place. In addition to the provision that, in discharging its duties, the Interim Committee was at all times to take into account the responsibilities of the Security Council under the Charter for the maintenance of international peace and security, a provision was added that the Committee was not to consider any matter of which the Security Council was seized.

49. Those Members which had chiefly opposed the creation of the Interim Committee, however, stated that they would be unable to take part in its activities because it was an illegal body, designed to usurp the functions of the Security Council and to undermine the principle of the unanimity of the permanent members of that Council. 106/

50. Similar objections concerning the Interim Committee were raised at the third and fourth sessions. 107/

2. The Peace Observation Commission and the Collective Measures Committee

51. During the discussions at the fifth session 108/ on the agenda item "United action for peace", objection was again made, as in the case of the establishment of the Interim Committee, that the Assembly was seeking to arrogate to itself powers which properly belonged to the Security Council. In favour of the arrangements proposed in a draft resolution 109/ submitted under the item, it was argued that it was necessary for the Assembly, faced with a situation in which the Security Council appeared unable to fulfil its primary function of maintaining peace and security, to exercise its "residual power of recommendation" in this field.

52. However, there was general agreement 110/ on the question of the establishment of the Peace Observation Commission. It was stated, in this connexion, that the Assembly had the right, under Article 22, to establish such subsidiary organs as it deemed necessary. The power of the Assembly to engage in observation, including investigation through special commissions, was implied in its power to make recommendations. The Commission, it was considered, would serve as an effective instrument for keeping the Assembly informed on any incidents imperilling peace which might occur. In regard to the proposed membership of the Commission, it was stressed, nevertheless, that it should be representative and should not be dominated by a particular group of States. A draft resolution, 111/ providing that the functions of observation and of the co-ordination of resources for collective action should be undertaken by the Interim Committee, was withdrawn.

106/ G A (II), 1st Com., 97th mtg., p. 335.

107/ G A (III/1), Plen., 168th and 169th mtgs., pp. 663-682; Ad Hoc Pol. Com., 2nd-5th mtgs., pp. 4-52; G A (IV), Plen., 250th mtg., pp. 304-312; Ad Hoc Pol. Com., 16th-20th mtgs., pp. 67-93.

108/ G A (V), Plen., vol. I, 299th-302nd mtgs., pp. 292-347; 1st Com., 354th-371st mtgs., pp. 63-174.

109/ G A (V), Annexes, a.i. 68, pp. 4-6, A/C.1/576.

110/ G A (V), 1st Com., vol. I, 354th-362nd mtgs., pp. 63-124; 365th and 366th mtgs., pp. 137-142.

111/ G A (V), Annexes, a.i. 68, pp. 3 and 4, A/C.1/575.

53. The establishment of the Collective Measures Committee 112/ was, on the other hand, opposed as illegal and as encroaching on the jurisdiction of the Security Council and the Military Staff Committee under the Charter. In favour of its establishment, the need for the Assembly, failing action by the Security Council, to be prepared to recommend measures for collective action was stressed. During the discussions, some doubts were expressed concerning the functions to be assigned to the Committee; these, it was felt, were not defined with sufficient precision to ensure that the Committee did not become involved in activities contrary to its objective and which might even impede United Nations efforts for peace.

54. The draft resolution was modified 113/ to take into account various amendments 114/ defining more precisely the terms of reference of the Committee.

3. *The Panel of Field Observers and the Panel of Military Experts*

55. During the discussions 115/ on the establishment of these two panels, the view was again expressed that the Assembly was acting contrary to the Charter, since the panels were designed to fulfil functions which came within the sphere of the Security Council. It was also maintained that the appointment of such bodies fell outside the competence of the Secretary-General. In favour of the establishment of these bodies, it was maintained that the Assembly and, in the case of the Field Observers, the Secretary-General had the authority to take steps to fulfil their functions in relation to the maintenance of peace.

4. *The Committees on Information from Non-Self-Governing Territories*

56. The questions which have arisen concerning these committees relate more closely to the application of Article 73 e than to the application of Article 22, and are dealt with in this Repertory under Article 73 e. In so far as the views expressed during the discussions 116/ have a bearing on the application of Article 22, they are summarized below.

57. Certain of the Administering Authorities maintained that the Assembly did not have the power to establish a committee such as that proposed. They stated that the obligations undertaken under Article 73 e provided only for the transmission to the Secretary-General of certain data "for information purposes". This did not give the Assembly the right of supervision over the administration of Non-Self-Governing Territories such as it possessed in the case of Trust Territories; the establishment of a committee such as that proposed would be a modification of the Charter. To establish

112/ G A (V), 1st Com., vol. I, 354th-362nd mtgs., and 367th mtg., pp. 147-152.

113/ G A (V), Annexes, a.1. 68, pp. 6-8, A/C.1/576/Rev.1.

114/ G A (V), Annexes, a.1. 68, pp. 8 and 9, A/C.1/578 and A/C.1/581.

115/ G A (IV), Plen., 252nd mtg., pp. 329-334; Ad Hoc Pol. Com., 21st-24th mtgs., pp. 94-119. G A (V), Plen., vol. I, 299th-312th mtgs., pp. 292-347; 1st Com., vol. I, 354th-362nd mtgs., pp. 63-124, 366th and 367th mtgs., pp. 142-147.

116/ G A (I/2), 4th Com., 21st mtg., pp. 124-127, Plen., 64th mtg., pp. 1557-1569, (G A resolution 66 (I)); G A (II), 4th Com., 35th-37th and 42nd mtgs., pp. 28-45 and 76-78, Plen., vol. I, 108th mtg., pp. 732-744, (G A resolution 146 (II)); G A (III/1), 4th Com., 52nd-57th and 59th mtgs., pp. 4-63 and 69-79, Plen., 155th mtg., pp. 380-393, (G A resolution 219 (III)); G A (IV), 4th Com., 120th-122nd mtgs., pp. 157-172, Plen., 262nd and 263rd mtgs., pp. 449-461, (G A resolution 332 (IV)); G A (VII), 4th Com., 264th-267th mtgs., pp. 105-112 and 116-128, Plen., 402nd mtg., pp. 342-355, (G A resolution 646 (VII)).

it on a permanent basis, as was later proposed, and to give it certain of the functions suggested from time to time would be tantamount to the creation of a permanent organ of control, which would be a violation of Article 2 (7) and would be contrary to the objective of Article 73 e. The only functions which the committee could usefully and legally perform were, it was stated, procedural ones. Examination by a committee between sessions of the Assembly, of the information transmitted by the Administering Authorities would introduce political considerations which were not intended by the Charter.

58. In opposition to these views, it was maintained that the Assembly had the right to utilize the information transmitted by the administering Powers and, under Article 10, had itself the right to consider this information; in accordance with Article 22 it might establish a subsidiary organ to assist it in this regard. Moreover, Article 73 e should be read in the context of the whole of Article 73 under which the administering Powers had undertaken certain obligations to promote the interests of the people of the Non-Self-Governing Territories under their administration. Therefore, the Assembly had the right and the duty to consider this information with a view to ascertaining that these obligations were fulfilled. Some machinery was necessary to assist the Assembly in discharging this duty and, since the obligations of the administering Powers would exist as long as Non-Self-Governing Territories remained, there would be need for continuing machinery to consider this information.

59. The decisions of the Assembly have reflected, in general, a compromise between these two points of view.

5. The United Nations Palestine Commission

60. Under the Plan of Partition with Economic Union for Palestine, 117/ discussed at the first part of the second session of the General Assembly, the following functions were assigned to the United Nations Palestine Commission: (1) to take over the administration of Palestine from the Mandatory Power; (2) to carry out measures for the establishment of the frontiers of the Arab and Jewish States and the City of Jerusalem; (3) to select and establish in each State a Provisional Council of Government, to exercise general direction over it and progressively to transfer to it responsibility for the administration of the State; (4) to exercise political and military control over the armed militia in each State; and (5) to approve the election regulations for each State drawn up by the Provisional Council of Government.

61. In the discussions prior to the adoption of resolution 181 (II), the principal constitutional question which emerged related to whether the General Assembly was acting within its constitutional powers and functions in taking decisions concerning the future government of Palestine. This question is referred to in this Repertory under Articles 10 and 14. A subsidiary question was, however, whether the Assembly was acting within its powers in establishing a subsidiary organ to exercise the functions of government.

62. It was objected that the Assembly, in granting executive, legislative and administrative powers to the Commission, would be exceeding its powers under the Charter; legislative powers properly belonged to the authorities which represented the people, and the Commission, in controlling the life of Palestine, would be granted greater powers than the General Assembly itself possessed. On the other hand, it was maintained that the competence of the Assembly to establish the Commission and to assign the particular functions to it stemmed legally from its power under Articles 10 and 14, to

117/ G A resolution 181 (II).

discuss and to make recommendations on any questions or matters within the scope of the Charter, including those affecting peace, and its power to assist the inhabitants of a mandated territory to establish themselves. 118/

63. The Plan of Partition, including the provisions relating to the functions of the United Nations Palestine Commission, was adopted by the General Assembly under resolution 181 (II) by 33 votes to 6, with 13 abstentions. 119/

6. The question of establishing an international criminal court

64. In connexion with the proposed establishment of an international criminal court, the question was raised whether the General Assembly might legally establish a subsidiary body to perform functions which were not specifically assigned to the Assembly itself.

65. The question of the establishment of an international criminal court arose in connexion with the consideration by the Assembly, at its third session, of the Convention on the Prevention and Punishment of the Crime of Genocide. The Assembly by resolution 260 B (III), invited the International Law Commission to study the desirability and possibility of establishing "an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions".

66. In its report to the General Assembly at its fifth session, 120/ the International Law Commission stated that one of its special rapporteurs had first raised the question whether the judicial organ mentioned in the resolution was to be created as an organ of the United Nations and had stated that, in that case, an amendment of the Charter of the United Nations would be necessary.

67. In this regard several of the members of the Commission held that Article 7 of the Charter merely enumerated the principal organs of the United Nations and that it did not preclude the possibility of creating new subsidiary organs; therefore, the creation of an international judicial organ would not require an amendment of the Charter. The problem would be the same whether the organ was created within the framework of the United Nations or outside the Organization. The Commission decided by 7 votes to 3, with 1 abstention, that the establishment of an international judicial organ was possible.

68. After considering the report of the Commission at its fifth session, the General Assembly, by resolution 489 (V), decided to establish a committee on international criminal jurisdiction to prepare one or more preliminary draft conventions and proposals relating to the establishment and the statute of an international criminal court, bearing in mind that a final decision on the question could not be taken except on the basis of concrete proposals.

69. This Committee considered alternative methods of establishing such a court. In its report to the General Assembly at its seventh ~~session~~ 121/ it stated that the view

118/ G A (II), Plen., 124th-126th mtgs., pp. 1324-1379, Ad Hoc Com. on the Palestinian Question, 24th-31st mtgs., pp. 147-195.

119/ G A (II), Plen., vol. II, 128th mtg., p. 1425.

120/ G A (V), Suppl. No. 12 (A/1316), p. 16.

121/ G A (VII), Suppl. No. 11 (A/2136), para. 18.

had been expressed that the most satisfactory course would be to establish the court as a principal organ of the United Nations by an amendment of the Charter but, recognizing that this was out of the question at the present stage of international relations, the Committee had considered the problem of whether the court should be established by resolution of the General Assembly or by a convention to be concluded between the States which wished to become parties.

70. The establishment of the court by resolution of the General Assembly, while having certain advantages, would, it was felt, have serious disadvantages in the opinion of some members of the Committee. In the report of the Committee it was stated that:

"Under the Charter, the court could only be established as a subsidiary organ. The principal organ would presumably be the General Assembly, but a subsidiary organ could not have a competence falling outside the competence of its principal, and it was questionable whether the General Assembly was competent to administer justice. Furthermore, the court would become subordinate to the Assembly, which in many respects was undesirable, and its continued existence would be made subject to shifting political currents, in so far as it might always be dissolved by a resolution of the Assembly." 122/

71. The Committee decided by 8 votes to 3, with 2 abstentions, against recommending the establishment of the court by resolution of the General Assembly, and, by 6 votes to 2, with 6 abstentions, in favour of establishing the court by a convention.

72. During the discussion of the report of the Committee on International Criminal Jurisdiction in the Sixth Committee at the seventh session of the General Assembly 123/ the question of the power of the Assembly to establish the court as a subsidiary organ under Article 22 was raised again.

73. Some representatives considered that that Article did not empower the Assembly to establish the court as a subsidiary organ since, under the Article, it was only entitled to create subsidiary organs to assist it in the performance of its functions. The functions of the Assembly did not include the exercise of criminal jurisdiction over individuals and it could not, therefore, delegate such functions to a subsidiary organ. Nor was the work which the court would be called upon to perform in any way accessory to that of the General Assembly. Moreover, if the Assembly created a subsidiary organ it would be subordinate to the Assembly; a court so established would lack the necessary authority and independence. The Assembly had powers of recommendation only and the jurisdiction of the court could not be based on a recommendation to Member States which they might or might not accept. The question was also raised whether the concept of the responsibility of States, on which the United Nations was based, was compatible with the principle of the responsibility of individuals on which the draft Statute was based.

74. Some representatives, on the other hand, considered that the General Assembly was entitled to establish the court by resolution as a subsidiary organ under the broad powers of the Assembly to promote international peace and security. The question was not whether the Charter contained provisions giving the Assembly jurisdictional functions which it could delegate to a subsidiary organ; the Assembly had previously created subsidiary organs to fulfil such functions as observation and conciliation,

122/ G A (VII), Suppl. No. 11 (A/2136), para. 21.

123/ G A (VII), 6th Com., 321st-328th mtgs., pp. 95-140.

which it could not carry out itself. The existence of an international criminal jurisdiction would help the Assembly in its function of promoting international peace. In regard to the subordination of the court to the General Assembly, it was stated that there was no reason to fear that the General Assembly would first establish and later abolish the court, nor that it would interfere in the work of the court so long as the principle of the independent exercise of the judicial power was recognized.

75. The question of possible amendment of the Charter was also raised and, in this connexion, it was stated that it might be possible to amend Article 22 more easily than other Articles, or than to add a new Article providing for the establishment of new United Nations organs which would be neither subsidiary nor principal organs. It was also suggested that the court might be established by a General Assembly resolution and the statute of the court then opened for signature.

76. The Sixth Committee recommended 124/ that further consideration of the matter be postponed until Governments which had not yet done so could present their observations. The Assembly, however, adopted an amended text 125/ providing that another committee be appointed to study the various methods by which such a court might be established and to report at the ninth session.

77. In regard to the powers of the Assembly to establish the court as a subsidiary organ, the 1953 Committee on International Criminal Jurisdiction stated in its report 126/ that some representatives

"believed that the legal powers of the General Assembly under the Charter were not sufficient to enable it to establish a court by resolution. Under Article 22 of the Charter, the General Assembly might establish only such subsidiary organs as it deemed necessary for the performance of its functions, and to try individuals was not a function of the Assembly. Moreover, since international criminal jurisdiction, far from being a factor in the maintenance of peace, might often impair the possibilities of peace by interfering with the process of political conciliation, Article 22 in juxtaposition with Article 11 did not apply... The tribunals already established by the General Assembly which were considered by some members as constituting useful precedents for an international court (the Administrative Tribunal and the United Nations Tribunals in Libya and Eritrea), furnished no adequate precedent. The creation of these tribunals was based either on the Assembly's powers under the Charter as regards the Secretariat staff, or on the very exceptional and very broad powers given it by the Italian Peace Treaty.

"In favour of the power of the General Assembly to establish the court by resolution it was said that, under Article 22 of the Charter, the Assembly could establish subsidiary organs to assist it in performing its functions; under Article 11, the Assembly was given functions with regard to the maintenance of international peace and security. The existence of an international criminal jurisdiction would be a factor in the maintenance of peace, since it would strengthen the moral opinion of the world against international crimes. Therefore, nothing in the Charter prevented the General Assembly from creating an international criminal court as a subsidiary organ. Such a subsidiary organ might well be entitled to do things which the General Assembly itself could never perform, provided that its activity was in the interest of the maintenance of peace."

124/ G A (VII), Annexes, a.i. 52, pp. 20-23, A/2275.

125/ *Ibid.*, pp. 23-24, A/L.119; G A resolution 687 (VII).

126/ G A (IX), Suppl. No. 12 (A/2645), paras. 39 and 40.

78. At its ninth session, the General Assembly decided, by resolution 898 (IX), to postpone consideration of the question of an international criminal jurisdiction until it had taken up the report of the Special Committee on the question of defining aggression and had taken up again the draft Code of Offences against the Peace and Security of Mankind.

B. The question of the scope of the powers of subsidiary organs

1. *Relation of the powers of subsidiary organs to the functions and powers of the General Assembly*

79. The question has been raised as to the extent to which a subsidiary body may perform the functions of the General Assembly itself, or whether the role of a subsidiary organ should be confined to assisting a principal organ. The question of the extent of the control to be exercised by the General Assembly over a subsidiary organ has also been raised. The discussions on these questions are illustrated by the following examples.

a. THE INTERIM COMMITTEE

80. During the discussions in the First Committee at the second session of the General Assembly 127/ concerning the establishment of the Interim Committee, the view was expressed that the functions proposed for that body would make it a principal rather than a subsidiary organ. Certain functions to be assigned to the Committee, for example, the right to study and to investigate situations which might arise in connexion with the maintenance of international peace and security, the responsibility of following through on recommendations of the Assembly and the inception of the work necessary to enable the Assembly to make recommendations on the general principles of co-operation in the maintenance of international peace, were functions of the Assembly itself. Subsidiary organs, however, were meant to assist the Assembly and could not have independent functions. The Charter nowhere provided that the General Assembly could delegate its own powers to a subsidiary body. The role of a subsidiary body, it was maintained, should be confined to that of assisting the principal body, for instance, by undertaking the examination of specific questions and by presenting reports on them.

81. In addition, the suggested composition and continuous character of the Interim Committee would debar it from being a subsidiary organ. It was to consist of all the Members of the United Nations and would therefore be a replica of the Assembly. It had been proposed that the Interim Committee should be in permanent session, but the Charter provided that the Assembly -- as distinct from the Security Council which was to meet in continuous session -- was to meet in regular annual sessions and in such special sessions as were required; it did not authorize the Assembly to establish a permanent replica of itself. Nor did the Charter authorize the Assembly to establish permanent organs as was the case with the Economic and Social Council and the Military Staff Committee.

82. Other representatives, while agreeing that the functions of a subsidiary organ were to assist the principal organ, maintained that the proposed Interim Committee would, in fact, be a legally constituted subsidiary organ since it was to be established to assist the Assembly by undertaking a preliminary study of questions to be considered by it and by completing the consideration of questions with which the

127/ G A (II), Plen., vol. II, 110th and 111th mtgs., pp. 753-822;
G A (II), 1st Com., 74th-78th and 94th-97th mtgs., pp. 129-179 and 307-336.

Assembly did not have adequate time to deal. The proposed Committee was to make its recommendations to the Assembly and might not make recommendations direct to the Security Council or to Member States. The limiting amendments inserted by the Committee in the original draft resolution were aimed, in general, at meeting the objection that the Committee would infringe the functions of the Security Council (see paragraph 48 above).

83. At the third session, 128/ during the discussions on the re-establishment of the Interim Committee for a further experimental year, doubts were expressed specifically in regard to the proposal to authorize that body to request advisory opinions of the International Court of Justice. It was held that Article 96 stated that "other organs" and specialized agencies which were authorized by the General Assembly might request such opinions. That implied that only principal organs, and not subsidiary organs, should have this authority. The advisability of granting such power to a temporary body was also questioned. Other representatives supported the proposal, maintaining that Article 96 could apply to subsidiary as well as to principal organs. A proposal to delete the relevant paragraph from the draft resolution was rejected in the Ad Hoc Political Committee by 27 votes to 14, with 9 abstentions.

84. The delegation of power to the Interim Committee to receive reports from and to give "advisory opinions" to the special committees and commissions set up by the General Assembly was also criticized 129/ as being a violation of the essential principles of the Charter.

b. THE INTERNATIONAL LAW COMMISSION

85. The Committee on the Progressive Development of International Law and its Codification stated in its report 130/ to the Assembly at its second session that it had considered two methods for the selection of the members of the proposed International Law Commission: (a) appointment by the International Court of Justice; or (b) election by the Assembly. A large majority of the Committee had favoured the latter alternative.

86. The Committee, by a majority, also recommended that the Commission should be authorized to consider projects and draft conventions recommended by Governments, other United Nations organs, specialized agencies or other international bodies interested in the field of international law. Certain members of the Committee had, however, felt that the initiative for undertaking studies and making recommendations in this field lay with the Assembly under the terms of the Charter, and that the Commission was therefore constitutionally precluded from making recommendations to the Assembly on projects other than those referred to it by the Assembly itself.

87. During the discussions 131/ in the Sixth Committee, the majority of representatives agreed that the International Law Commission should be a subsidiary body of the General Assembly and that its members should be elected by that body. The initiative of the Commission would, of course, it was stated, always be subject to the directions of the Assembly. Certain representatives supported the view expressed by the minority of the Committee on the Progressive Development of International Law and its Codification that the Commission should not be authorized to undertake studies not

128/ G A (III/1), Ad Hoc Pol. Com., 5th mtg., pp. 45-50.

129/ G A (III/1), Ad Hoc Pol. Com., 3rd mtg., p. 23.

130/ G A (II), 6th Com., p. 173, annex 1 (A/331), paras. 5 and 9.

131/ G A (II), 6th Com., 37th and 38th mtgs., pp. 4-16.

specifically referred to it by the General Assembly. A series of amendments, 132/ designed to maintain the prerogative of the Assembly of assigning tasks to the Commission and to limit the Commission's powers of initiative, was rejected in the Sixth Committee. 132/

C. THE ADMINISTRATIVE TRIBUNAL

88. At the fourth session, the question of the extent of the delegation of powers to the Administrative Tribunal, both in relation to the powers of the Assembly and to those of the Secretary-General, was raised during the discussions in the Fifth Committee 134/ on the draft Statute of the Tribunal.

89. Two general positions were taken during the debate in the Committee: one was based on the desire to emphasize the completely independent position of the Tribunal as a final court of appeal, so as to afford staff members a sense of security if they felt that the terms of their contracts had been violated; and the second on the desire to safeguard the rights of the General Assembly and the position of the Secretary-General as the chief administrative officer of the Organization.

90. In regard to the powers of the Secretary-General, there was some discussion whether the competence of the Tribunal should be confined to questions of alleged breaches of contract or whether it should also extend to disciplinary matters. The latter view had been expressed by the Staff Committee, 135/ but the Secretary-General 136/ and the Advisory Committee on Administrative and Budgetary Questions 137/ had considered that this would infringe the administrative responsibilities of the Secretary-General. To deal with the matter, the Secretary-General had proposed the creation of new machinery within the Secretariat. Some representatives considered that the Tribunal's competence should cover disciplinary matters since the proposed new Secretariat committee, as well as the existing Appeals Board, if it were retained, would have only advisory functions and it was necessary that the staff should have a body to which it could appeal; others felt that for reasons of good administration it was necessary to preserve the Secretary-General's final powers in such matters. It was decided that the Tribunal's competence should apply only to alleged breaches of contract.

91. Concerning the Tribunal's relation to the General Assembly, two main trends of thought emerged during the discussions. Some representatives wished to stress the administrative character of the Tribunal and its position as an auxiliary or subsidiary body of the Assembly; others wished to stress its judicial aspects. The decisions taken by the Assembly during its fourth session represented a compromise between the two points of view.

92. Thus, an amendment 138/ to change the name of the Tribunal to "Staff Claims Board", submitted on the ground that this was a more accurate description of the functions of the body, was rejected by 19 votes to 5, with 13 abstentions. On the other hand, the rejection of an amendment providing that the members of the Tribunal be called "judges" rather than "members" was by 22 votes to 9, with 7 abstentions, and an amendment to replace the term "Executive Secretary" by the term "Registrar" was rejected by 17 votes to 9, with 8 abstentions.

132/ G A (II), 6th Com., pp. 205 and 206, annex II, (A/C.6/199).

133/ G A (II), 6th Com., 58th mtg., pp. 147-157.

134/ G A (IV), 5th Com., 188th-190th mtgs., pp. 13-31.

135/ G A (IV), 5th Com., Annex, vol. I, pp. 146-156, A/986, annex IV, paras. 4-8.

136/ Ibid., pp. 146 and 147, A/986, para. 7.

137/ Ibid., pp. 156 and 157, A/1003, paras. 8 and 9.

138/ For text of revised draft Statute and amendments submitted thereto, see G A (IV), 5th Com., Annex, vol. I, pp. 165-169, A/C.5/L.4/Rev.2.

93. Concerning the competence of the Tribunal, fears were expressed lest it diminish the authority of the General Assembly to make or to change staff regulations, or that of the Secretary-General to issue staff directives. An amendment was submitted stating that nothing in the Statute would be construed in any way as a limitation on the authority of the General Assembly or of the Secretary-General, acting on the instructions of the General Assembly, to alter at any time the rules and regulations of the Organization. The amendment, however, was withdrawn, since its sponsor interpreted the draft Statute of the Administrative Tribunal as giving full assurances on that point.

94. There was also some discussion concerning the provision that, in the event of any dispute concerning the competence of the Tribunal, the matter would be settled by decision of the Tribunal. The view was expressed that it would be for the General Assembly, as the body which had established the Tribunal, to decide the limits of the latter's competence and not for the Tribunal itself. The principle that a tribunal should be empowered to decide on its own competence was, however, generally accepted and no amendments to this provision were put forward.

95. Similar differences of opinion concerning the position of the Tribunal were reflected in the discussions about the appointment and dismissal of its members. The draft Statute contained a provision under which the members of the Tribunal would have been elected by the International Court of Justice. This provision was supported by various representatives on the ground that it would serve to protect the independent character of the Tribunal. Other representatives considered that the General Assembly, having set up an auxiliary body, should itself elect its members. A compromise suggestion, that members should be elected by the General Assembly on the proposal of the Court, was not formally put forward. An amendment, submitted by the Advisory Committee on Administrative and Budgetary Questions, providing that the members of the Tribunal be appointed by the General Assembly, was adopted by 33 votes to 4, with 2 abstentions.

96. An amendment was also submitted providing that, in the election of the members of the Tribunal, administrative training and experience be given equal weight with legal training and experience and judicial service; the sponsor, however, agreed that the amendment should be inserted rather in the Committee's report than in the Statute.

97. There were differences of opinion regarding the provision for dismissal of members of the Tribunal. The draft Statute provided that a member might not be dismissed "unless in the unanimous opinion of the other members he is unsuited for further service". This was supported by various representatives as necessary to secure the independent status of the Tribunal. Other representatives, however, considered that it was the exclusive right of the General Assembly to decide whether a member should be relieved of his duties. An amendment providing that a member could only be dismissed if the General Assembly, by a two-thirds vote, ruled that he was unsuited for further service was adopted by 16 votes to 14, with 11 abstentions. In plenary meeting, 139/ an amendment 140/ was submitted which reinstated the original text. It was adopted by 27 votes to 15, with 8 abstentions.

139/ G A (IV), Plen., 255th mtg., pp. 360-362.

140/ G A (IV), Plen., Annexes, p. 172, A/1132.

2. Powers of decision conferred upon subsidiary organs

98. The General Assembly has conferred upon its subsidiary organs the power to take final decisions in several respects. This is illustrated below by instances in which the Assembly conferred powers to adopt rules of procedure, to establish subsidiary organs, to convene international conferences, and to enter into independent consultations with Governments, specialized agencies and other organizations.

a. THE POWER TO ADOPT RULES OF PROCEDURE

99. The Assembly has on various occasions specifically authorized its subsidiary organs to adopt their own rules of procedure. Thus, the following organs were authorized to do so: the United Nations Special Committee on Palestine, by resolution 106 (S-1); the United Nations Special Committee on the Balkans, by resolution 109 (II); the United Nations Commission on Korea, by resolution 195 (III); and the United Nations Commission for Eritrea, by resolution 299 A (IV).

100. Sometimes this power has been limited in various respects. For example, resolution 111 (II), establishing the Interim Committee, provided that the rules of procedure of the Assembly were to apply to that Committee as far as they were applicable and that additional rules might be adopted by the Interim Committee provided they were not inconsistent with those of the General Assembly. By resolution 196 (III), which continued the Committee, it was provided that the rules of procedure governing the proceedings of the Interim Committee and of such sub-committees and commissions as it might set up were to be those already adopted by the Committee "with such changes and additions as the Interim Committee may deem necessary, provided that they are not inconsistent with any provision of the present resolution or with any applicable rule of procedure of the General Assembly." Resolution 295 (IV), establishing the Committee on a permanent basis, contained a similar provision without, however, referring to the rules of procedure of the Assembly. By resolution 351 (IV) the Assembly adopted the Statute of the Administrative Tribunal which provided, in article 6, that the Tribunal was to establish its own rules "Subject to the provisions of the present Statute".

101. In one instance, that of the Atomic Energy Commission, it was provided, by resolution 1 (I), that the Commission was to make recommendations for its rules to the Security Council, which was to approve them as a procedural matter.

102. During the second session, the General Assembly adopted a rule in its own rules of procedure relating to the rules of subsidiary organs. This rule 141/ states that the Assembly

"may establish such subsidiary organs as it deems necessary for the performance of its functions. The rules relating to the procedure of committees of the General Assembly... shall apply to the procedure of any subsidiary organ, unless the General Assembly or the subsidiary organ decides otherwise."

103. During the discussion 142/ in the Sixth Committee preceding the adoption of this rule, the view was expressed that it was for the General Assembly, and not for the subsidiary organs, to decide what rules to apply. The introduction of the rule would sanction the idea that the General Assembly and the subsidiary organs were on the same

141/ Rule 162 of the rules of procedure of the General Assembly (United Nations Publication, Sales No.: 1954.1.17).

142/ G A (II), 6th Com., 57th mtg., pp. 142-144.

level. It was maintained, on the other hand, that there was no presumption that the rules of procedure suitable for a committee of the General Assembly were also suitable for any subsidiary organ; a subsidiary organ needed latitude to adopt satisfactory rules. An amendment 143/ to delete the reference to subsidiary organs in the last sentence of the rule was rejected by 28 votes to 7.

b. THE POWER TO ESTABLISH SUBSIDIARY BODIES

104. In certain instances, the General Assembly has authorized its subsidiary organs in their turn to establish subsidiary bodies. Thus, for example, the United Nations Special Committee on the Balkans was authorized, by resolution 109 (II), to establish such sub-committees as it deemed necessary; by resolution 193 (III) it was instructed to "continue to utilize observation groups". By resolution 288 (IV) the Assembly continued "the authorization to the Special Committee, in its discretion, to appoint and utilize the services and good offices of one or more persons whether or not members of the Special Committee";

105. The Interim Committee was authorized by resolutions 111 (II), 196 (III) and 295 (IV) to appoint commissions of inquiry within the scope of the Committee's duties, as it might deem useful and necessary, provided that the decision to conduct such inquiries was made by two thirds of the members present and voting, and that an inquiry away from Headquarters would not be conducted without the consent of the State in the territory of which the inquiry was to take place. The provisions concerning the rules of procedure of the Interim Committee (see paragraph 100 above) referred to "such sub-committees and commissions" as the Interim Committee might set up.

106. The United Nations Conciliation Commission for Palestine was authorized by resolution 194 (III) to appoint a United Nations representative who was to co-operate with the local authorities with respect to the interim administration of the Jerusalem area. It was also authorized, by the same resolution, to appoint such subsidiary bodies and to employ such technical experts, acting under its authority, as it might find necessary for the effective discharge of its functions and responsibilities under the resolution. By resolution 394 (V) the Commission was directed to establish an office which, under the direction of the Commission, was to fulfil certain duties regarding the repatriation and resettlement of refugees and the payment of compensation to them.

107. The Peace Observation Commission was granted authority by resolution 377 B (V) in its discretion to appoint sub-commissions and to utilize the services of observers to assist it in the performance of its functions. It was later requested by resolution 508 (VI), to establish a Balkan sub-commission. At that time the Assembly discussed 144/ the functions to be assigned to the sub-commission. The question of the sub-commission's relations to the Peace Observation Commission was raised, including the question whether the membership of the sub-commission should be restricted to members of the parent body. The view was expressed that the appointment of a sub-commission fell within the terms of reference of the Peace Observation Commission. The question also arose whether the sub-commission could act without the authorization of the Peace Observation Commission and whether it could undertake any specific task without first seeking a precise mandate from the General Assembly or from the Interim Committee when the Assembly was not in session, or from the Security Council. The interpretation of the draft resolution 145/ by its sponsors as empowering the sub-commission to proceed without further authorization was, however, accepted.

143/ G A (II), 6th Com., pp. 273 and 274, annex 4g (A/C.6/186), para. 12.

144/ G A (VI), Ad Hoc Pol. Com., 2nd-6th mtgs., pp. 7-33.

145/ G A (VI), Annexes, a.i. 19, p. 16, A/1984, paras. 8 (c) and 11.

C. THE POWER TO CONVENE INTERNATIONAL CONFERENCES

108. In one instance, a subsidiary organ, the Disarmament Commission, 146/ was given the power to decide when an international conference of States should be convened; in another instance, the Committee on the draft Convention on Freedom of Information was empowered 147/ to recommend the convening of such a conference.

D. THE POWER TO ENTER INTO INDEPENDENT CONSULTATIONS

1. With Governments

109. In a number of instances, subsidiary organs have been authorized to negotiate or to act in consultation with Governments. Examples of subsidiary organs which have been given such authorization are cited below:

Ad Hoc Committee on the United Nations Relief and Rehabilitation Administration, under resolution 6 (I);
United Nations International Children's Emergency Fund (UNICEF), under resolution 57 (I);
United Nations Special Committee on Palestine, under resolution 106 (S-1);
United Nations Special Committee on the Balkans, under resolutions 109 (II), 193 (III), 288 (IV) and 382 B (V);
United Nations Palestine Commission, under the Plan of Partition with Economic Union, under resolution 181 (II);
United Nations Conciliation Commission for Palestine, under resolution 194 (III);
United Nations Commission on Korea, under resolution 195 (III);
United Nations Commissioner in Libya, under resolution 289 A (IV);
United Nations Commission for Eritrea, under resolution 289 A (IV);
United Nations Relief and Works Agency for Palestine Refugees in the Near East, under resolution 302 (IV);
Standing Committee on the Repatriation of Greek Children, under resolution 382 C (V);
United Nations Tribunal in Libya, under resolution 388 (V);
United Nations Commissioner in Eritrea, under resolution 390 A (V);
Negotiating Committees for Extra-Budgetary Funds, under resolutions 393 (V), 410 (V), 571 B (VI), 607 (VI), 693 (VII) and 759 (VIII);
Ad Hoc Commission on Prisoners of War, under resolution 427 (V);
Office of the United Nations High Commissioner for Refugees, under its Statute, adopted by resolution 428 (V);
United Nations Tribunal in Eritrea, under resolution 530 (VI);
Ad Hoc Committee on South West Africa, under resolutions 449 A (V), 570 (VI) and 651 (VII);
United Nations Good Offices Commission on the question of the Treatment of People of Indian Origin in the Union of South Africa, under resolutions 615 (VII) and 719 (VIII).

146/ G A resolution 502 (VI).

147/ G A resolution 426 (V).

ii. With specialized agencies

110. A number of resolutions of the General Assembly have provided for consultations between the subsidiary organs of the Assembly and the specialized agencies. The following are examples of subsidiary organs in respect of which such provisions were made:

Special Committee on Information transmitted under Article 73 e of the Charter, under resolution 146 (II);
 United Nations Mediator in Palestine, under resolution 186 (S-2);
 United Nations Relief and Works Agency for Palestine Refugees in the Near East, under resolution 302 (IV);
 Agent General for Korean Reconstruction, under resolution 410 (V);
 Office of the United Nations High Commissioner for Refugees, under its Statute, adopted by resolution 428 (V);
 UNICEF, under resolution 417 (V).

iii. With other organizations

111. The following are examples of subsidiary organs which have been authorized by the General Assembly to enter into direct consultations with other organizations:

United Nations International Children's Emergency Fund (UNICEF), under resolution 57 (I);
 United Nations Special Committee on Palestine, under resolution 106 (S-1);
 International Law Commission, under its Statute, adopted by resolution 174 (II);
 United Nations Mediator in Palestine, under resolution 186 (S-2);
 United Nations Commission in Libya, under resolution 289 A (IV);
 United Nations Commission for Eritrea, under resolution 289 A (IV);
 Standing Committee on the Repatriation of Greek Children, under resolution 382 C (V);
 Agent General For Korean Reconstruction, under resolution 410 (V); 148/
 Office of the United Nations High Commissioner for Refugees, under its Statute, adopted by resolution 428 (V).

3. Binding effect of decisions of subsidiary organs

112. The question of the effect to be given to decisions of subsidiary organs was raised at the eighth session of the General Assembly, when the Fifth Committee, during its discussions of the supplementary estimates, considered 149/ proposed appropriations for the awards of compensation ordered by the Administrative Tribunal in the case of eleven staff members whose appointments had been terminated during 1953.

113. Certain representatives, in opposing these appropriations, expressed the view that the General Assembly had the right to review and to refuse to give effect to the decisions of the Tribunal. The Tribunal, it was argued, had been established not under the Charter, but by decision of the General Assembly. It was not an organ of constitutional origin and independence, but a subsidiary administrative organ of the

148/ The resolution provided that the authorities in Korea with which the Agent General might establish relationship were to be designated by the United Nations Commission for the Unification and Rehabilitation of Korea (UNCURK).

149/ G A (VIII), Plen., 471st mtg., pp. 459-461; 5th Com., 420th-423rd mtgs., pp. 281-295 and pp. 299-309; 425th-427th mtgs., pp. 320-326 and pp. 329-340.

General Assembly, established to carry out certain functions assigned under the Charter to the General Assembly. The Assembly was responsible, in co-operation with the Secretary-General, for maintaining a Secretariat which would meet the highest standards, and it had not intended to evade that responsibility by creating the Tribunal; in any event, the powers of the Assembly were inalienable. The Assembly was therefore responsible for the actions of the Tribunal. As a subsidiary organ, the Tribunal was subject to the control of the Assembly, and its decisions, although final in relation to the parties concerned, namely the applicant and the Secretary-General, could not create obligations binding on the Assembly. It would be conceded that the Assembly could abolish the Tribunal or could change its Statute; it could also take the lesser step of reviewing the Tribunal's decisions and could take action to correct the results of those decisions if the Tribunal had exceeded its competence or when errors of fact or law had resulted in a serious miscarriage of justice.

114. In this case, it was maintained, the Tribunal had infringed the jurisdiction of the Secretary-General in that, instead of confining itself to determining whether the Secretary-General's decisions had been taken in accordance with the procedures set forth in the staff regulations and whether he had exercised his judgment arbitrarily, it had substituted its own evaluation of the facts and its own assessment of the gravity of the offence involved for those of the Secretary-General.

115. A further basis for the right of the Assembly to review the Tribunal's decisions, it was stated, was that the funds for the awards had to be appropriated by the General Assembly as part of the United Nations budget, which must be considered and approved by the Assembly. In considering the appropriation, the Assembly was bound to review the decisions of the Tribunal; it was not entitled to relinquish to any subsidiary organ its power to make appropriations.

116. Other representatives stated that the judgements of the Tribunal, when given in accordance with its Statute, were final and without appeal. The text of the Statute was clear on this point. Even if the Tribunal were considered a subsidiary organ, the General Assembly could not set aside the Tribunal's decisions for, in establishing the Tribunal, it had expressly stipulated that those decisions would be final. The General Assembly was bound, in law, to give effect to the Tribunal's decisions and to pay the compensation ordered by that body.

117. This position, it was maintained, also arose from the nature of the Tribunal, which was a judicial body and not an advisory organ. Any dispute concerning its competence was, in accordance with the Statute of the Tribunal, to be settled by the Tribunal's decision. No member of the Tribunal could be dismissed without the consent of the other members. The Tribunal was not called on to report to the General Assembly, and its competence had been extended to cover the specialized agencies. The decisions of a judicial organ were not subject to review by the political and legislative body which had created it. It was further maintained by one representative ^{150/} that the Assembly had not established the Tribunal to assist it in the performance of a function which it could, in principle, perform itself, but had established it because the Assembly could not perform judicial functions. Another representative ^{151/} held that the Tribunal was not a subsidiary organ established under Article 22, but had been established by the Assembly in accordance with its powers and responsibilities in personnel matters and in accordance with those of the Secretary-General.

^{150/} G A (VIII), 5th Com., 421st mtg., para. 16.

^{151/} *Ibid.*, para. 45.

118. The judgements of the Tribunal in the cases in question were, it was maintained, in accordance with its Statute and with the staff regulations and rules in force at the time the judgements were given. The Assembly could amend those regulations and the Statute of the Tribunal, or it could abolish the Tribunal, but it could not review the Tribunal's final decisions. While the power of the General Assembly to approve appropriations was not contested, that could hardly serve as a ground for refusing to meet contractual obligations.

119. During the discussions, various references to the debates in the Fifth Committee 152/ at the time of the establishment of the Tribunal were made in support of both the contentions that the Tribunal was a judicial body, and that it was an administrative subsidiary organ of the General Assembly.

120. Upon recommendation of the Fifth Committee, the Assembly decided 153/ to ask the International Court of Justice for an advisory opinion on the following legal questions:

"(1) Having regard to the Statute of the United Nations Administrative Tribunal and to any other relevant instruments and to the relevant records, has the General Assembly the right on any grounds to refuse to give effect to an award of compensation made by that Tribunal in favour of a staff member of the United Nations whose contract of service has been terminated without his assent?

"(2) If the answer given by the Court to question (1) is in the affirmative, what are the principal grounds upon which the General Assembly could lawfully exercise such a right?"

121. During discussions at the Committee level of the draft resolution containing the above-quoted text, two amendments 154/ were rejected in the Fifth Committee: the first, to delete from the first question the words "on any grounds", was rejected by 28 votes to 19, with 6 abstentions, and the second, to add to the second question the words "do these grounds, whatever they may be, apply to any of the decisions which have led to the request for the appropriation?", was rejected by 22 votes to 15, with 17 abstentions.

122. One representative 155/ voted for the draft resolution in the Fifth Committee on the understanding that the Court should also take into consideration the question whether a subsidiary organ could impose final decisions upon the Assembly, and whether the Assembly was empowered to deal with the form and substance of any appropriation to be included in the United Nations budget.

123. Other representatives criticized the draft resolution on the grounds either that there was no question of the powers of the Assembly or that the Statute of the Tribunal was clear on the questions involved and its findings were final.

124. In its advisory opinion of 13th July 1954, 156/ the Court first considered whether the Administrative Tribunal had been established as a judicial body, or as an advisory organ or a subordinate committee of the General Assembly. The Court found

152/ See II B, paras. 88-97 above.

153/ G A resolution 785 (VIII).

154/ G A (VIII), Annexes, a.i. 38, p. 14, A/C.5/L.267.

155/ G A (VIII), 5th Com., 426th mtg., para. 91.

156/ Effect of awards of compensation made by the U.N. Administrative Tribunal, I C J, Reports 1954, p. 47.

that the terminology used in the Statute 157/ and the fact that the Tribunal had been given the power to issue orders to the chief administrative officer of the Organization, that is to say, for the rescinding of the decision contested or for the specific performance of the obligation invoked, showed that the Tribunal had been established as an independent and truly judicial body pronouncing final judgements without appeal.

125. Having found that the parties to a dispute brought before the Administrative Tribunal were the staff members concerned and the United Nations, represented by the Secretary-General, the Court concluded that the General Assembly, as an organ of the United Nations, was bound by a judgement of the Administrative Tribunal.

126. The Court examined the principal contentions of the Governments which had taken the position that there were grounds which would justify the General Assembly in refusing to give effect to awards of the Administrative Tribunal.

127. One of these contentions had been that the General Assembly did not have the legal power to establish a Tribunal competent to render judgements binding on the United Nations. The Court, while noting that there was no express provision in the Charter for the establishment of judicial bodies and no indication to the contrary, referred to an earlier Opinion 158/ in which the Court had said:

"Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties."

128. It was inevitable that there would be disputes between the Organization and staff members as to their rights and duties. As the United Nations had jurisdictional immunities in national tribunals, the Court said that, in its opinion, it would have been hardly consistent with the aims of the Charter that the Organization should afford no judicial or arbitral remedy to its own staff. The Court found therefore that the power to establish a tribunal, to do justice as between the Organization and the staff members, was essential to ensure the efficient working of the Secretariat, and that capacity to do so arose by necessary intendment out of the Charter. Furthermore, as the General Assembly was given the power to establish subsidiary organs under Articles 7 (2) and 22 and to regulate staff relations under Article 101 (1), the Court found that the power to establish an Administrative Tribunal might be exercised by the General Assembly.

129. Some Governments had contended that while the General Assembly had implied powers to set up an Administrative Tribunal, this did not enable it to establish a tribunal with authority to make decisions binding on the General Assembly itself. The Court stated that the precise nature and scope of the measures by which the power of creating a tribunal was to be exercised was a matter for determination by the General Assembly alone, and the Assembly had, in fact, decided to invest the Tribunal with

157/ G A resolution 351 (IV), Article 1: "A Tribunal is established by the present Statute to be known as the United Nations Administrative Tribunal";

Article 2, paragraph 1 providing that the Tribunal shall "be competent to hear and pass judgment upon applications";

Article 10 providing that:

"2. The judgments shall be final and without appeal.

"3. The judgments shall state the reasons on which they are based."

158/ Reparation for injuries suffered in the service of the United Nations, I C J, Reports 1949, p. 182.

power to render judgements which would be "final and without appeal", and which would be binding on the United Nations.

130. It had also been argued by some Governments that an implied power to impose legal limitations upon the express power of the General Assembly under the Charter was not legally admissible. The establishment of a tribunal competent to make an award of compensation to which the General Assembly was bound to give effect would contravene the Charter provisions under Article 17 (1), conferring upon the Assembly the power to consider and to approve the budget of the Organization.

131. The Court rejected this contention, and stated that the function of approving the budget did not mean that the General Assembly had absolute power to approve or disapprove the expenditures proposed to it; the General Assembly had no alternative but to honour obligations already incurred by the Organization, and these obligations comprised the awards of compensation made by the Administrative Tribunal in favour of staff members.

132. The Court also rejected the contention that the implied power of the General Assembly to establish a tribunal could not enable the Tribunal to intervene in matters falling within the province of the Secretary-General. The Court found that, by virtue of Article 101, the General Assembly could limit or control the powers of the Secretary-General in staff matters. The Assembly authorized the intervention of the Tribunal to the extent that such intervention might result from the exercise of jurisdiction conferred upon the Tribunal by its Statute. A decision of the Tribunal that an action by the Secretary-General involved a breach of a contract of service did not in any sense constitute intervention in a power of the Secretary-General under the Charter, because the Secretary-General's legal powers in staff matters had already been limited in this respect by the General Assembly.

133. The view had been put forward that the Administrative Tribunal was a subsidiary, subordinate, or secondary organ and that, accordingly, the judgements of the Tribunal could not bind the General Assembly which had established it. The Court noted that this view assumed that, in adopting the Statute of the Administrative Tribunal, the General Assembly had established an organ which it deemed necessary for the performance of its own functions. In the opinion of the Court, however, the Charter did not confer judicial functions on the General Assembly. By establishing the Administrative Tribunal, the General Assembly had not delegated the performance of its own functions; it had exercised a power which it had under the Charter to regulate staff relations. In regard to the Secretariat, the Charter conferred upon the General Assembly the power to make regulations, but not the power to adjudicate upon, or otherwise deal with, particular instances.

134. The Court considered the argument that an authority exercising the power to make regulations was inherently incapable of creating a subordinate body competent to make decisions binding upon the body creating it. The Court stated that the contention could not be justified by analogy to national laws, since it was common practice in national legislatures to create courts with the capacity to render decisions legally binding on the legislatures which brought them into being.

135. For these reasons, the Court held "that the General Assembly has not the right on any grounds to refuse to give effect to an award of compensation made by the Administrative Tribunal of the United Nations in favour of a staff member of the United Nations whose contract of service has been terminated without his assent." The second question submitted by the General Assembly to the Court was therefore not considered.

136. The question of the effect of decisions of the Administrative Tribunal was discussed again at the ninth session of the General Assembly, in connexion with the agenda item entitled "Awards of compensation made by the United Nations Administrative Tribunal; advisory opinion of the International Court of Justice."

137. A draft resolution 159/ was submitted to the Fifth Committee by the United States and Argentina, containing amendments to the Statute of the Administrative Tribunal, including a proposal to establish a board of judicial review with power to review the judgements of the Administrative Tribunal.

138. The representative of the United States, introducing the draft resolution, 160/ stated that his Government, while respecting the authority and competence of the Court, disagreed with the opinion of the majority of the Court, and that neither the Charter nor the Statute of the Administrative Tribunal provided that the judgements of an organ, established by the General Assembly to adjudicate matters concerning the powers of the Assembly and of the Secretary-General with regard to the staff, should be binding on the General Assembly itself.

139. In support of this position, he said that Judge Alvarez, in his dissenting opinion, had stated that the General Assembly was bound to give effect to the Tribunal's decisions only in cases in which the Tribunal had acted within the limits of its competence. Judge Hackworth, in his dissenting opinion, had stated that the Administrative Tribunal was not an organ created by the Charter but a subsidiary organ of the General Assembly, and that an award by the Tribunal did not, ipso facto, create an obligation for the United Nations or a vested right for the staff member. Judge Carneiro, in his dissenting opinion, had said that, if not subject to control by the General Assembly, the decisions of the Administrative Tribunal, a subsidiary organ, would be binding on two principal organs (the General Assembly and the Secretary-General), even in matters within their own competence.

140. The representative of the United States also referred to the statement of the Court that, in order to subject judgements of the Administrative Tribunal to review by any body other than the Tribunal itself, it would be necessary that the Statute of the Tribunal, or some other legal instrument governing it, should contain an express provision to that effect. The Court had noted that the General Assembly had the power to amend the Statute of the Administrative Tribunal by virtue of article 11 of that Statute, and to provide for means of redress by another organ. Accordingly, the joint draft resolution proposed amendments to the Statute which would establish appropriate machinery for the review of judgements of the Administrative Tribunal.

141. The representative of Argentina said 161/ that, despite the advisory opinion of the International Court of Justice, his Government maintained the position that the General Assembly had the right to review, confirm or reverse decisions of a subsidiary organ set up by the Assembly itself. The Charter did not authorize the General Assembly to establish an organ with powers wider than its own. The General Assembly had been placed above all other organs by Article 10 of the Charter, which empowered it to discuss any questions or any matters, except as provided in Article 12.

142. The International Court of Justice had stated that the parties to a dispute before the Administrative Tribunal were the staff members concerned and the United Nations, represented by the Secretary-General. No Article of the Charter provided

159/ A/C.5/L.317.

160/ G A (IX), 5th Com., 474th mtg., paras. 50-55.

161/ G A (IX), 5th Com., 476th mtg., paras. 1-7.

that the Secretary-General acted on behalf of the Organization. The only organ which acted on behalf of the United Nations was the General Assembly, and the parties to a dispute before the Administrative Tribunal were the Secretary-General and the staff members concerned.

143. The Financial Regulations provided that no expenditure could be incurred until the General Assembly had made the necessary appropriations. The fact that no exceptions had been made in the case of the Administrative Tribunal showed that it had not been the intention of the Assembly to consider itself bound by the judgements of the Tribunal.

144. Under Article 15 (2) of the Charter, the General Assembly received and considered reports from the other organs of the United Nations. It could, therefore, reject or amend the decisions of those organs, including the judgements of the Administrative Tribunal.

145. Some delegations, besides the co-sponsors of the draft resolution, stated that, while respecting the advisory opinion of the International Court of Justice, they disagreed with the conclusions reached by the Court. Other delegations expressed agreement with the advisory opinion. 162/

146. The General Assembly, at its 515th meeting on 17 December 1954, adopted resolution 888 (IX) by which the Assembly accepted, "in principle", judicial review of judgements of the Administrative Tribunal, and established a Special Committee composed of eighteen Member States "to study the question of the establishment of such a procedure in all its aspects and to report to the General Assembly at its tenth session;".

C. Relations of subsidiary organs to other organs

147. As mentioned in the General Survey (see paragraphs 39-44 above), subsidiary organs established by the Assembly have been asked to report to other organs, or to report to the General Assembly through other organs, or to report to the General Assembly and to other organs. In some instances, they have been instructed to receive directions from other organs. This practice has seldom given rise to constitutional discussion.

1. Organs reporting to or receiving directions from the Security Council

148. Subsidiary organs which have been asked to report to and/or to take directions from the Security Council are, in the order of their establishment, the Atomic Energy Commission, the United Nations Palestine Commission, the United Nations Mediator in Palestine, the United Nations Conciliation Commission for Palestine, the Peace Observation Commission, the Collective Measures Committee and the Disarmament Commission.

a. THE ATOMIC ENERGY COMMISSION

149. During the discussions at the first part of the first session 163/ on the establishment of the Atomic Energy Commission, some differences of view were expressed concerning a draft resolution 164/ recommending that it should be set up by the General Assembly and report to the Security Council.

162/ G A (IX), 5th Com., 474th-480th mtgs., pp. 270-307.

163/ G A (I/1), Plen., 17th mtg., pp. 257-267; 1st Com., 2nd and 3rd mtgs., pp. 6-13.

164/ G A (I/1), 1st Com., pp. 29 and 30, Annex 1 (A/C.1/2).

150. In favour of this draft resolution, it was stated that the general interest of all countries in the solution of the problem of atomic energy should be recognized through the establishment of the Commission by the General Assembly. But in view of the security aspect of the problem, the Commission should present its reports and recommendations to the Security Council. The importance of the role of the Assembly in setting up the Commission was also emphasized; its establishment by the Assembly meant, for instance, that its work would not be subject to the veto. The Commission, by virtue of its constitution, had the right to call on Members of the Assembly for help and advice, being itself an "emanation of the General Assembly".

151. On the other hand, the view was expressed that it was anomalous that the Commission should report to the Security Council, which had practically the same composition; matters would be expedited if the Security Council were to be assigned the whole problem, which fell within its jurisdiction.

152. Moreover, it would be difficult to establish the Commission's responsibility to the Assembly since it was the Security Council which would decide whether or not reports were to be forwarded to the Assembly or to other organs of the United Nations; if the Assembly were to be granted the power to establish the Commission, it should retain control over it.

153. With regard to the Commission's relations with other organs, the draft resolution provided that it was not to infringe the responsibilities of any organ of the United Nations, but should present recommendations for the consideration of those organs in the performance of their tasks under the terms of the Charter.

b. THE UNITED NATIONS PALESTINE COMMISSION

154. According to the Plan of Partition with Economic Union, adopted by resolution 181 (II), the United Nations Palestine Commission, in its administration of Palestine, was to "act in conformity with the recommendations of the General Assembly under the guidance of the Security Council." If a Provisional Council of Government for either of the two States proposed in the Plan could not be selected or carry out its functions by the specified date, the Commission was to "communicate that fact to the Security Council for such action with respect to that State as the Security Council may deem proper.". It was further provided that the Commission was to be guided in its activities "by the recommendations of the General Assembly and by such instructions as the Security Council may consider necessary to issue." The measures taken by the Commission, it was provided, were to "become immediately effective unless the Commission has previously received contrary instructions from the Security Council." The Commission was to render periodic monthly or more frequent progress reports to the Council and was to make its final report to the next regular session of the Assembly and to the Security Council simultaneously.

155. Under this resolution, the Assembly also requested that the Security Council take the necessary measures provided in the Plan for its implementation. If, during the transitional period, the Council decided that the situation in Palestine constituted a threat to the peace, in order to maintain international peace and security, the Security Council, it was provided, "should supplement the authorization of the General Assembly by taking measures, under Articles 39 and 41 of the Charter, to empower the United Nations Commission, as provided in this resolution, to exercise in Palestine the functions which are assigned to it by this resolution;" In connexion with the fact that the Commission would be under the direction of the Security Council, it was emphasized by some representatives 165/ that the powers conferred on that

165/ G A (II), Plen., vol. II, 124th mtg., p. 1325, and 125th mtg.

Council were in line with its responsibilities under the Charter (see also paragraphs 60-63 above).

C. THE UNITED NATIONS MEDIATOR IN PALESTINE

156. The United Nations Mediator in Palestine, appointed under resolution 186 (S-2), was instructed to render progress reports monthly, or more frequently, as he deemed necessary, to the Security Council and to the Secretary-General for transmission to the Members of the United Nations. He was also directed to conform in his activities with such instructions as the General Assembly or the Security Council might issue. In addition, he was empowered to co-operate with the Truce Commission for Palestine established by the Security Council on 23 April 1948.

157. As regards the relations of the Mediator with the Security Council, it was stated, 166/ in support of the draft resolution providing for the appointment of the Mediator, that it sought to unify the work of the various organs of the United Nations and that the action of the Assembly would supplement the measures being taken by the Security Council. It was, however, objected that, as the Security Council had adopted a resolution on a truce in Palestine and had appointed the Truce Commission in that connexion, there was no need to establish another authority which, in fact, was to deal with similar problems.

158. The draft resolution 167/ before the First Committee had provided that the Mediator should receive instructions only from the Security Council. An amendment 168/ to provide that he should also receive instructions from the General Assembly was adopted by the First Committee by 26 votes to 6, with 16 abstentions. In support of the amendment, it was stated that the original wording seemed to imply that the Assembly would surrender its powers of direction, whereas it was quite likely that the Assembly might wish to take up the Palestine problem at a future session.

159. A further amendment 169/ to provide that a commission rather than an individual should be appointed was rejected by 28 votes to 1, with 22 abstentions. In support of this amendment, it was stated that, as a subsidiary organ of the Assembly, a commission would possess the necessary authority to deal with the Truce Commission established by the Security Council, with which it would have to co-operate closely, whereas an individual might be subject to the orders of the Truce Commission.

D. THE CONCILIATION COMMISSION FOR PALESTINE

160. Under General Assembly resolution 194 (III), the Conciliation Commission was to carry out, in addition to the specific functions given to it by that resolution, such additional functions and directives as might be given to it by the General Assembly or by the Security Council. It was to undertake, upon the request of the Security Council, any of the functions "now assigned" to the United Nations Mediator in Palestine or to the United Nations Truce Commission by resolutions of the Security Council. It was further provided that "upon such request to the Conciliation Commission by the Security Council with respect to all the remaining functions of the United Nations Mediator on Palestine under Security Council resolutions, the office of the Mediator shall be terminated;". The Commission was instructed to report

166/ G A (S-II), 1st Com., 140th and 141st mtgs., pp. 242-262.

167/ G A (S-II), Annex to vol. I and vol. II, pp. 42-45, A/C.1/299.

168/ A/C.1/301.

169/ A/C.1/SC.9/2.

immediately to the Security Council, for appropriate action by that organ, any attempt by any party to impede access to Jerusalem. It was also instructed to render progress reports periodically to the Secretary-General for transmission to the Security Council and to the Members of the United Nations.

e. THE PEACE OBSERVATION COMMISSION AND THE
COLLECTIVE MEASURES COMMITTEE

161. Resolution 377 (V), "Uniting for peace", which established these two bodies, provided, with respect to the Peace Observation Commission, that the Security Council might utilize the Commission in accordance with its authority under the Charter. General agreement was expressed with this provision on the ground that this would be of assistance to the Security Council in fulfilling its responsibilities under the Charter (see paragraph 52 above).

162. With regard to the Collective Measures Committee, the resolution provided that it was to study and make a report to the Security Council and to the General Assembly, not later than 1 September 1951, on methods which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter, taking account of collective self-defence and regional arrangements. The discussions concerning this body related principally to the question whether the Assembly, in creating it, was infringing the functions and powers of the Security Council (see paragraph 53 above).

f. THE DISARMAMENT COMMISSION

163. The Disarmament Commission, set up under General Assembly resolution 502 (VI), was established "under the Security Council". It was directed to report periodically, for information, to the Security Council and to the General Assembly, or to the Members of the United Nations when the General Assembly was not in session.

2. *Subsidiary organs reporting to or receiving directions from the
Economic and Social Council*

164. Such organs, in the order of their establishment, are: the United Nations International Children's Emergency Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees, the United Nations Commission for the Unification and Rehabilitation of Korea (UNCURK) and the United Nations Korean Reconstruction Agency (UNKRA), the Committee on the draft Convention on Freedom of Information, the Group of Experts on Financing of Economic Development through the Establishment of Equitable Prices, and the Special Rapporteur on the question of establishing a special United Nations fund for economic development.

a. THE UNITED NATIONS INTERNATIONAL CHILDREN'S EMERGENCY FUND

165. General Assembly resolution 57 (I), establishing UNICEF, laid down that it was to be administered under policies established by an Executive Board "in accordance with such principles as may be laid down by the Economic and Social Council and its Social Commission". In addition to the Governments designated by the General Assembly as members of the Executive Board of UNICEF, other Governments might be designated as members of the Board by the Economic and Social Council on the recommendation of the Executive Board.

166. The Executive Board was to make periodic reports on its operations at such times and in such form as the Economic and Social Council provided. A report was to be submitted to the Council at its fourth session containing a recommended programme and estimate of expenses which were to be subject to the approval of the Council. The

activities of UNICEF were to be reviewed by the General Assembly at its second session upon the basis of a special report from the Economic and Social Council.

167. Resolution 417 (V), continuing UNICEF, provided that the Executive Board was to consist of the Governments of States represented on the Social Commission and of the Governments of eight other States, not necessarily Members of the United Nations, to be designated by the Economic and Social Council, with due regard to geographical distribution and to the representation of the major contributing and recipient countries.

168. Resolution 802 (VIII), which placed UNICEF on a continuing basis, requested the Economic and Social Council to continue to review its work periodically and to make recommendations to the General Assembly as appropriate. It also requested the Secretary-General to report to the Council on the co-ordination of the programmes carried on by UNICEF and the technical assistance programmes of the United Nations and the specialized agencies.

b. THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

169. The Statute of the Office of the United Nations High Commissioner for Refugees, adopted by resolution 428 (V), provided that the High Commissioner was to follow policy directives given him by the General Assembly or by the Economic and Social Council. It stated that he should be entitled to present his views before the General Assembly, the Economic and Social Council and their subsidiary bodies, and that he was to report annually to the General Assembly through the Economic and Social Council.

c. THE UNITED NATIONS COMMISSION FOR THE UNIFICATION AND
REHABILITATION OF KOREA AND THE UNITED NATIONS KOREAN
RECONSTRUCTION AGENCY

170. Resolution 410 (V), establishing the United Nations Korean Reconstruction Agency, authorized the United Nations Commission for the Unification and Rehabilitation of Korea to consider the reports of the Agent General for Korean Reconstruction to the General Assembly and to transmit any comments thereon to the Economic and Social Council and to the General Assembly. The Commission was also authorized to consult from time to time with the Agent General regarding the provisional programme and to make recommendations on it to the Council. The Agent General was directed to submit reports to the General Assembly through the Secretary-General, transmitting copies simultaneously to UNCURK and to the Economic and Social Council. The Council was requested to review the reports of the Agent General and any comments which UNCURK might submit thereon and to make reports and recommendations to the General Assembly.

d. THE COMMITTEE ON THE DRAFT CONVENTION ON FREEDOM OF INFORMATION

171. This Committee, established by resolution 426 (V), was requested to report to the Economic and Social Council at its thirteenth session on the results of its work and to submit recommendations, in particular, with regard to the advisability of convening a conference of plenipotentiaries with a view to the framing and signature of a Convention on Freedom of Information.

e. THE GROUP OF EXPERTS ON THE FINANCING OF ECONOMIC DEVELOPMENT
THROUGH THE ESTABLISHMENT OF EQUITABLE PRICES

172. The report of this group of experts, appointed by the Secretary-General under resolution 623 (VII), was transmitted to the General Assembly together with the views of the Economic and Social Council thereon.

f. THE SPECIAL RAPPORTEUR ON THE QUESTION OF ESTABLISHING A SPECIAL
UNITED NATIONS FUND FOR ECONOMIC DEVELOPMENT

173. Under resolution 724 (VIII), the then President of the Economic and Social Council was appointed to examine, with the assistance of the Secretary-General, the comments of Governments concerning the establishment of an international fund. He was to submit an interim report on his work to the Council and a final report to the General Assembly with his comments.

3. *Organs reporting to or receiving directions from the
Trusteeship Council*

174. Two subsidiary organs established by the General Assembly were instructed to report to the Trusteeship Council: The United Nations Advisory Council for the Trust Territory of Somaliland under Italian Administration and the Sub-Committee on the Questionnaire formulated by the Trusteeship Council.

a. THE UNITED NATIONS ADVISORY COUNCIL FOR THE TRUST TERRITORY OF
SOMALILAND UNDER ITALIAN ADMINISTRATION

175. As provided in resolution 209 A (IV), the terms of reference of the Advisory Council were laid down in the Trusteeship Agreement for the Trust Territory of Somaliland under Italian Administration, adopted by General Assembly resolution 442 (V). Article 11 of the Agreement provided that "States members of the Advisory Council, if they are not members of the Trusteeship Council, shall be entitled to participate without vote in the debates of the Trusteeship Council on any question specifically relating to the Territory". The members of the Advisory Council or the majority of the members, acting in the Advisory Council's name, might make to the Trusteeship Council "such oral statements or may submit such written reports or memoranda as they may deem necessary for the Council's proper consideration of any question specifically relating to the Territory".

b. THE SUB-COMMITTEE ON THE QUESTIONNAIRE FORMULATED BY THE
TRUSTEESHIP COUNCIL

176. The Sub-Committee was instructed, under resolution 751 (VIII), to examine the Questionnaire formulated by the Trusteeship Council, to study such changes as might be necessary to adapt it to the special conditions of each Territory, and to submit its conclusions to the Trusteeship Council. The Trusteeship Council was invited to prepare, on the basis of the Sub-Committee's work, separate questionnaires adapted to the particular circumstances of each Trust Territory.

4. *Relations between subsidiary organs*

177. At various times, provisions have been made for co-operation between subsidiary organs. One instance, that of the United Nations Mediator in Palestine and the Truce Commission for Palestine of the Security Council, has already been mentioned. The following are other examples:

a. THE INTERIM COMMITTEE

178. Certain subsidiary organs of the General Assembly have been authorized to report to the Interim Committee. Thus, the Temporary Commission on Korea 170/ was authorized to consult the Interim Committee, the report of the Commission for Eritrea 171/ was to be considered by the Interim Committee as well as by the General Assembly, and the Interim Committee was authorized to utilize the Peace Observation Commission 172/ when the Assembly was not in session if the Security Council was not exercising its functions with regard to the matter in question, and with the proviso that the Commission should only conduct investigations in the territories of States with their agreement.

179. Objections were raised to the provisions of the above-mentioned resolutions on the ground that since the Interim Committee was itself an illegally-established body, it was unconstitutional for other organs to report to it or to permit it to give directions to other subsidiary organs, and that such directions were harmful. 173/

180. With regard to the Peace Observation Commission, the provision for its utilization by the Interim Committee when the General Assembly was not in session was included in a draft resolution 174/ submitted to the First Committee at the first part of the third session in connexion with the agenda item "United action for peace". During the discussions, 175/ various representatives suggested the deletion of this reference, either on the ground that the Interim Committee was itself an illegal or useless body, or that it did not have the confidence of all Member States, and that it was desirable that the new Peace Observation Commission should work under the auspices of the whole of the United Nations. It was also stated that, since the draft resolution provided for calling the Assembly into session at twenty-four hours' notice, if the situation were sufficiently critical to justify instructions to the Interim Committee, they could best be issued by the General Assembly itself rather than by a subordinate body. Other representatives supported the provision on the ground that it would provide for an element of continuity and that its use might avoid the necessity for calling a special session of the Assembly.

181. Two amendments 176/ to the draft resolution were submitted, providing for the deletion of the reference to the Interim Committee. One was rejected 177/ by 44 votes to 8, with 8 abstentions, and the other was thereupon withdrawn. A suggestion 178/ that the Secretary-General rather than the Interim Committee should be authorized to utilize the Peace Observation Commission after consulting with the members of the Security Council was withdrawn when the sponsors of the draft resolution stated that they considered it undesirable to place such a heavy responsibility on the Secretary-General.

170/ G A resolution 112 B (II).

171/ G A resolution 289 A (IV).

172/ G A resolution 377 A (V).

173/ See, for example, with reference to the Temporary Commission on Korea, discussions on the Interim Committee at the third session, G A (III/1), Plen., 168th and 169th mtgs., pp. 663-682. With reference to the Commission for Eritrea, see G A (IV), Plen., 248th mtg., para. 102; 249th mtg., para. 33; 250th mtg., paras. 93 and 108-110.

174/ G A (V), Annexes, a.i. 68, pp. 6 and 7, A/C.1/576/Rev.1. The relevant provision contained in part B of this draft resolution remained the same in the original and the revised versions of the draft resolution.

175/ G A (V), 1st Com., 362nd mtg., para. 10; 365th and 366th mtgs., pp. 137-142.

176/ G A (V), Annexes, a.i. 68, pp. 9 and 10, A/C.1/583, para. 9, and A/C.1/584, para. 4.

177/ G A (V), 1st Com., 368th mtg., p. 157.

178/ Ibid., 365th mtg., para. 46.

- b. THE UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE, THE UNITED NATIONS RELIEF FOR PALESTINE REFUGEES AND THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST

182. The Conciliation Commission for Palestine established under resolution 194 (III) was instructed to facilitate the repatriation and resettlement of the refugees and the payment of compensation to them, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees 179/ and, through him, with "the appropriate organs and agencies of the United Nations".

183. By resolution 302 (IV), establishing the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the Agency was directed to consult with the Conciliation Commission in the best interests of their respective tasks, with particular reference to the question of the repatriation and resettlement of the refugees and the payment of compensation to them. The Conciliation Commission, under the same resolution, was instructed to transmit the final report of the Economic Survey Mission, with such comments as it might wish to make, to the Secretary-General for transmission to the Members of the United Nations and the Agency.

- c. THE UNITED NATIONS COMMISSION FOR THE UNIFICATION AND REHABILITATION OF KOREA AND THE UNITED NATIONS KOREAN RECONSTRUCTION AGENCY

184. Resolution 410 (V), under which the United Nations Korean Reconstruction Agency (UNKRA) was established, defined the relationship between that body and the United Nations Commission for the Unification and Rehabilitation of Korea (UNCURK). It authorized UNCURK: (1) to recommend to the Agent General of UNKRA such policies concerning the Agency's programme and activities as the Commission deemed necessary for the performance of its own functions; (2) to determine, after consultation with the Agent General, the geographical areas within which the Agency was to operate at any time; (3) to designate authorities in Korea with which the Agent General might establish relationships; (4) to take such steps as might be needed to support the Agent General in fulfilling his task; (5) to consider the reports of the Agent General and to transmit any comments on them to the Economic and Social Council and to the General Assembly; (6) to call for information on those aspects of the work of the Agent General which the Commission considered necessary for the proper performance of its work; (7) to consult with the Agent General regarding the provisional programme adopted for the Agency and to make recommendations on it to the Economic and Social Council.

185. The Agent General was directed to co-ordinate his programme with measures taken by UNCURK to carry out its terms of reference; to commence the operation of the programme at a time agreed upon by the Unified Command, UNCURK and the Agent General; to consult with and generally be guided by the advice of UNCURK on questions concerning its policies, and to be governed by its advice on matters concerning the geographical areas in which the Agency operated and the authorities in Korea with which it established relationships. Copies of the Agent General's reports to the General Assembly were to be transmitted simultaneously to UNCURK.

179/ G A resolution 212 (III).

ANNEX

Classified tabulation of subsidiary organs of the General Assembly
(in the order of their establishment)*Explanatory remarks*

186. As indicated in the Introductory Note, it has seemed desirable to complement the study of Article 22 by an annex listing the subsidiary organs and classifying them in certain broad categories. In view of the wide variations existing among these organs, their classification, even under broad categories, must be qualified. A column entitled "Remarks" has, therefore, been included in the annex which qualifies, as necessary, the categories assigned in the classification to individual organs.

187. The organs are listed according to the resolutions under which they were first established; where an organ was continued or re-established, a note to that effect is provided in the column "Remarks", but where a new organ to take the place of a former one was established, it is listed separately. Those bodies which the Assembly has recommended or authorized the Secretary-General to establish (as distinct from those of its subsidiary organs which it has itself established, with members to be appointed by the Secretary-General) are listed separately at the end, as is also the Balkan Sub-Commission of the Peace Observation Commission, which that Commission was requested to establish.

188. The first column gives the resolution or resolutions establishing the organ and laying down its terms of reference. Where subsequent resolutions have continued an organ or changed its terms of reference, this is indicated in the column "Remarks".

189. The second column classifies the bodies according to the following principal functions: study committees (S); political commissions (P); administrative assistance organs (A); operational agencies (O); and judicial bodies (J). Some of the subsidiary organs of the Assembly do not fall properly within any of these categories; a brief description of the principal discrepancies is given in the column "Remarks".

190. The third column, relating to membership, divides the bodies into three categories: those composed of States (S); those composed of individual experts (E); and those composed of a single individual (I). Where particular considerations or particular qualifications are taken into account in electing the members of these bodies or appointing the representatives to serve on them, this is indicated in the column "Remarks".

191. The fourth column, relating to the method of appointment, covers the following categories: election by the General Assembly (E); decision of the General Assembly (D) - this may relate to either a category of States or the naming of certain States without a formal election; appointment by the President of the Assembly (P); appointment by a committee of the Assembly (C); appointment by the Secretary-General (SG); or appointment by other indirect means (I). Note of such other indirect means is taken in the column "Remarks", as is also appointment by more than one method.

192. The fifth column, relating to duration, divides the organs into three categories: standing or "permanent" bodies (S); those established for an indefinite period (I); and those established for a specific period or for a particular purpose of limited duration (L).

193. The sixth column, relating to method of termination, contains three categories: bodies specifically terminated by resolution of the General Assembly (GA and the resolution number); those replaced by a new subsidiary organ with broadly similar functions (R); and those which are considered to have lapsed with the completion of their mandate (C).

194. The seventh column, relating to seat or place of meeting, lists three categories: Headquarters (H); Geneva (G); or in the field (F). The column only contains those instances where specific provision is made for the meeting place of the organ and not where this may be inferred from the tenor of the resolution. Variations are noted in this respect in the column "Remarks".

195. The eighth column, relating to method of reporting, lists the following categories: direct to the General Assembly (D); to the Security Council (SC); to or through the Economic and Social Council (ECOSOC); to the Trusteeship Council (TC); and to or through the Secretary-General (SG). An indication of any particular qualifications of these categories is given in the column "Remarks".

Established at the first part of the first session

Title of subsidiary organ	Resolution establishing							Remarks
	1 (I)	2 (I)	3 (I)	4 (I)	5 (I)	6 (I)	7 (I)	
1. Atomic Energy Commission	1 (I)	2 (I)	3 (I)	4 (I)	5 (I)	6 (I)	7 (I)	
2. Ad Hoc Committee on the United Nations Relief and Rehabilitation Administration	6 (I)	7 (I)	8 (I)	9 (I)	10 (I)	11 (I)	12 (I)	The functions of the Committee were to consult with the States signatory to the UNRRA agreement with a view to eliciting further contributions and to urge United Nations Members which had not done so to join UNRRA. It does not therefore fall exactly within any of the categories of functions in this list.
3. Advisory Committee on Administrative and Budgetary Questions	14 (I)	15 (I)	16 (I)	17 (I)	18 (I)	19 (I)	20 (I)	The Committee was also provided for in the provisional rules of procedure. Resolution 14 (I) provided that it was to be appointed at the second part of the first session. (For appointment, see resolution 72 (I)). The provisional rules of procedure provided that the members of the Committee were to be selected "on the basis of broad geographical representation, personal qualifications and experience", and that no two members

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
3. Advisory Committee on Administrative and Budgetary Questions (continued)									were to be nationals of the same State. These conditions were retained in subsequent revisions of the rules. The members have been elected by the Fifth Committee and the Assembly has accepted that Committee's recommendation.
4. Committee on Contributions	14 (I) para. 5	A	E	E	S	-	-	D	The Committee was also provided for in the provisional rules of procedure. Members were first appointed under resolution 16 (I). The same considerations as for the Advisory Committee were to be taken into account in electing the members. The members have been elected by the Fifth Committee and the Assembly has accepted that Committee's recommendations.
5. Board of Auditors	14 (I) regulation 20 74 (I)	A	E	E	S	-	-	D	Regulation 20 of the provisional financial regulations provided that the Board should "be appointed in a manner to be determined by the General Assembly during the second part of its first session". The functions of the Auditors were

Title of subsidiary organ	Headquarters establishing	Functions	Headquarters	Method of appointment	Term of office	Method of renewal	Place of meeting	Method of reporting	Remarks
5. Board of Auditors (continued)									<p>After 60 days the first report is made to the Secretary-General. The latest financial statement is the basis for the latest statement of the Board of Auditors.</p> <p>The Board of Auditors is the highest authority for the financial control of the United Nations.</p>
6. Committee to assist the Secretary-General in negotiations with the United States Government regarding the arrangements necessary as a result of the withdrawal of the United States from the United Nations.	22 E (2)	22 E (2)	22 E (2)	22 E (2)	22 E (2)	22 E (2)	22 E (2)	22 E (2)	<p>Issue called "Report of the Committee to assist the Secretary-General regarding the arrangements necessary as a result of the withdrawal of the United States from the United Nations."</p>
7. "Agreement of the United Nations League of Nations"	22 E (2)	22 E (2)	22 E (2)	22 E (2)	22 E (2)	22 E (2)	22 E (2)	22 E (2)	<p>The Committee was established by the Secretary-General, 1945, to assist the Secretary-General in the League of Nations.</p>

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
7. Negotiating Committee on League of Nations Assets (continued)									It was to consist of one representative of the delegations, "if they so desire", of eight Members.
8. Headquarters Commission	25 (I)	S	S	D	L	GA 100 (I) R	-	D	Part of the resolution setting forth the functions of the Headquarters Commission was formally repeated by the Assembly in resolution 100 (I); a new committee was established as an advisory committee to the Secretary-General concerning headquarters questions.

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
9. Committee on procedures for the admission of new Members	36 (I)	S	S	D	I	C	-	-	The Committee, together with a committee of the Security Council, was to draft rules which would be acceptable to both bodies, but specific provisions for a report to the Assembly were not included in the resolution.
10. Special Technical Committee on Relief Needs after the termination of the United Nations Relief and Rehabilitation Administration	48 (I)	S	E	I	I	C	-	SG	The Committee was to be composed of experts designated by ten Governments named in the resolution; they were, however, to serve in their individual capacities and not as representatives of the Governments designating them.
11. United Nations International Children's Emergency Fund [UNICEF]	57 (I)	O	S	D/I	I/S	-	-	ESC	The name was changed to "United Nations Children's Fund" but the symbol UNICEF retained by resolution 802 (VIII). Continued by resolutions 417 (V) and 802 (VIII).

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
11. United Nations International Children's Emergency Fund (UNICEF) (continued)									In resolution 57 (I) the States to form the Executive Board of UNICEF were designated by the Assembly; in resolution 417 (V) the Board was reconstituted to consist of the States represented on the Social Commission and eight other States designated by the Economic and Social Council. Resolution 57 (I) provided that the activities of the Fund would be reviewed by the Assembly at its second session; resolution 417 (V) stated that the Assembly would again consider the future of UNICEF at the expiration of three years, with the object of extending it on a permanent basis; resolution 302 (VIII) reaffirmed the two earlier resolutions "with the exception of any reference to time-limits contained in these resolutions".
12. Ad Hoc Committee on the Transmission of Information under Article 73 e of the Charter	56 (I)	S	M	Election	E	E	-	D	The resolution specifies that the Committee was to be composed of Members of the United Nations transmitting information and an equal number of Members elected by the Fourth Committee on behalf of the Assembly on as wide a geographical basis as possible.

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
13. United Nations Joint Benefit Committee	82 (I) (annex I, sect. 22)	A	E	I	S	-	-	-	In resolution 248 (III), adopting the definitive regulations for the United Nations Joint Staff Pension Fund, the name was changed (article 22) to United Nations Joint Staff Pension Board. Members are appointed by the Staff Benefit Committee of the United Nations and the other member organizations of the Pension Fund. In resolution 248 (III) the proportion to be elected by the United Nations committee and the committees of the other member organizations was changed, but the method of constituting the Joint Staff Pension Board remained the same.
14. United Nations Staff Benefit Committee	82 (I) (annex I, sect. 20)	A	E	E/I	S	-	-	-	Under resolution 248 (III), the name was changed (article 20) to United Nations Staff Pension Committee. Three members are elected by the General Assembly, three appointed by the Secretary-General and three, who must be participants, are elected by the participants.

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
15. Investments Committee	82 (I) (annex I, sect. 25)	A	E	SG	S	-	-	-	The provisions for the Investments Committee remained the same in the regulations adopted under resolution 248 (III) (article 25). Members are appointed by the Secretary-General after consultation with the Advisory Committee on Administrative and Budgetary Questions, but the appointments are subject to subsequent approval by the General Assembly.
16. Committee on the Progressive Development of International Law and its Codification	94 (I)	S	S	D	L	C	-	D	
17. Headquarters Advisory Committee	100 (I)	A	S	D	L	R	-	-	The Committee was to assist the Secretary-General, who was instructed to report by a certain date.
18. Committee on Procedures and Organization ^(of the General Assembly)	102 (I)	S	S	D	L	C	-	D	To be composed of members designated by governments named by the Assembly.

Established at the first special session

Title of subsidiary organ	Resolution establishing							Remarks
	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	
19. United Nations Special Committee on Palestine	106 (S-I)	P	S	D	I	R	F	SG/D
								The Committee's report was to be communicated to the Secretary-General so that it might be circulated to Members in time for consideration at the next regular session of the Assembly.
Established at the second session								
20. United Nations Special Committee on the Balkans / UNSCOB/	109 (II)	P	S	D	I	GA 508 (VI) R	F	D/SG
								The Committee was originally established "to remain in existence pending a new decision of the General Assembly"; it was continued under resolutions 193 (III), 288 (IV) and 382 B (V) with somewhat expanded terms of reference which do not, however, affect this classification. Resolution 508 B (VI) discontinuing the Committee requested the Peace Observation Commission to establish a Balkan sub-commission. Resolution 109 (II) provided that the Committee should report to the next regular session of the Assembly

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
20. United Nations Special Committee on the Balkans (continued)									and to any prior special session on the matter (the calling of which it was empowered to recommend to Members); it was also to "render such interim reports as it may deem appropriate" to the Secretary-General for transmission to Members. Resolution 195 (III) empowered it to consult the Interim Committee.
21. Interim Committee of the General Assembly	111 (II)	S S	S S	D L/I		-	-	D	The Interim Committee was initially established to function until the opening of the third session, when it was re-established for a further year by resolution 196 (III). It was established for an indefinite period under resolution 295 (IV). While the functions assigned to the Interim Committee were primarily to study and to report to the General Assembly on various matters to enable the Assembly to discharge certain of its functions under the Charter, the Committee was also assigned various functions which might be held to go beyond those of a purely "study" committee, that is to say, a limited power of

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
21. Interim Committee of the General Assembly (continued)									conducting investigations (resolution 111 (II)), consultations with the Temporary Commission on Korea (resolution 112 B (II)), with the Commission on Korea (resolution 195 (III)), and with the Special Committee on the Balkans (resolution 195 (III)), reporting to the Assembly on the report of the United Nations Commission for Eritrea (resolution 239 A (IV)). It was also authorized under resolution 195 (III) to request advisory opinions from the International Court of Justice and under resolution 377 A (V) to utilize, with certain limitations, the Peace Observation Commission.
22. United Nations Temporary Commission on Korea [UNTCOK]	112 (II)	P	S	D L	25.195 (III) A	25.195 (III) A	F	D	Resolution 195 (III) provided that the United Nations Commission on Korea "shall be regarded as having superseded" the Temporary Commission. Also authorized to consult the Interim Committee.

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
23. Special Committee on Information transmitted under Article 73 e of the Charter	146 (II)	S	S	D/ E	L	R	-	D	The Committee was to be composed of Members of the United Nations transmitting information and an equal number of Members elected by the Fourth Committee on behalf of the Assembly on as wide a geographical basis as possible.
24. International Law Commission	174 (II)	S	E	E	S	-	H	D	<p>The functions of the International Law Commission go beyond the scope of those of a "study committee" since under its Statute it may, among other things, draft international conventions and undertake the codification of topics approved by the General Assembly.</p> <p>The Statute provides that the Commission is to sit at the Headquarters of the United Nations but may hold meetings elsewhere after consultation with the Secretary-General.</p> <p>Commission drafts are to be circulated to Members through the Secretary-General.</p>

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
25. United Nations Palestine Commission	181 (II)	P	S	E	I	CA 186 (S-2)	E	D/SC	<p>Members of the Commission were to be elected "on as broad a basis, geographically and otherwise" as possible.</p> <p>The Commission was to render periodic progress reports monthly, or more frequently if desirable, to the Security Council; its final report was to be made to the Assembly and the Council simultaneously.</p>
26. Headquarters Advisory Committee	182 (II)	A	S	D	I	C	-	-	<p>The Committee was continued with the same terms of reference under resolutions 242 (III), 250 (IV), 461 (V) and 589 (VI).</p> <p>The Committee was to advise the Secretary General, who was to report to successive sessions of the Assembly.</p>
27. Advisory Committee on the Site of the Third Regular Session of the General Assembly	184 (II)	A	S	P	I	C	-	-	<p>The Secretary-General, in consultation with the Committee, was to choose the site.</p>

Established at the second special session

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
28. United Nations Mediator in Palestine	186(S-2)	P	I	C	I	GA 194 (III) R	- SC/SG		<p>Although it was not specified in the resolution that the Mediator's functions were to be exercised in the field, it is clear from the sense of the resolution that this was intended.</p> <p>The Mediator was to render progress reports monthly "or more frequently as he deems necessary" to the Security Council and to the Secretary-General for transmission to Members.</p>

Established at the first part of the third session

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
29. United Nations Conciliation Commission for Palestine	194 (III)	P	S	D	I	-	E	D/Sec. 20	<p>The Committee of the Assembly, consisting of five States, was appointed to present for the approval of the Assembly a proposal concerning the status of these States to form the Conciliation Commission. The Assembly voted on and adopted the proposal of the majority of this committee.</p> <p>The Committee was to report to the Assembly detailed proposals for a permanent international régime for the Jerusalem area; it was to report immediately to the Security Council any attempt by any party to impede access to Jerusalem; and it was to render progress reports periodically to the Secretary-General for transmission to the Security Council and to Members.</p>
30. United Nations Commission on Korea <u>(UNCKOK)</u>	195 (III)	P	S	D	1 1/2	GA 37C (2)	E	-	<p>The Commission 195 (III) was the Commission which reported to the Security Council at the Assembly. The Commission 195 (III) continued the work of the Commission 194 (III).</p>

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
30. United Nations Commission on Korea <u>UNCKOK</u> (continued)									<p>remain in existence pending a new decision by the General Assembly". Under that resolution the Commission was given somewhat different terms of reference which do not, however, affect this classification.</p> <p>The Commission was to report to the next session of the General Assembly or to any prior special session called on the question. It was to render "such interim reports as it may deem appropriate" to the Secretary-General for transmission to Members. It was also authorized to consult the Interim Committee.</p>
31. Special Committee on Information transmitted under Article 73 e of the Charter.	219 (III)	S	S	D/ E	1	R	-	D	<p>Composed of Members transmitting information and an equal number of other Members elected by the Fourth Committee on behalf of the General Assembly on as wide a geographical basis as possible.</p> <p>It was to meet at a place to be determined by the Secretary-General.</p>

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
32. Panel for Inquiry and Conciliation	268 D (III)	P	E	I	S	I	I	I	<p>There is some doubt as to whether a panel consisting of persons who may be chosen to serve on commissions of inquiry and conciliation is a subsidiary organ of the Assembly, properly so called, and the Assembly, in creating it, referred to Articles 13 (1) (a) and 11 (1) of the Charter rather than Article 22.</p> <p>Members were to be deemed fitted by "training, experience, character and standing" for service on commissions of inquiry and conciliation.</p> <p>Each Member State was invited to designate one to five persons.</p> <p>The Panel's articles provide that the Secretary-General shall communicate the Panel and any changes occurring in it to Member States, the Security Council, the General Assembly and the Interim Committee.</p>

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
33. Special Committee on a United Nations Guard	270 (III)	S	S	D	L	C	-	D	The Committee was to consist of "specially qualified" representatives of States named by the Assembly.
34. Special Committee on Methods and Procedures of the General Assembly	271 (III)	S	S	D	L	C	-	D/SG	It was to submit, if possible, a preliminary report direct to the Assembly at the current session. Its final report was to be transmitted to the Secretary-General for circulation to Members and consideration by the Assembly.

Established at the fourth session

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
35. United Nations Commissioner in Libya	289 A (IV)	P	I	E	L	C	F	SG	<p>Elected by the General Assembly on the nomination of a committee of the Assembly.</p> <p>The Assembly, in resolution 515 (VI), noted that Libya was established as an independent State and noted the part played by the Commissioner and the Advisory Council in implementing the resolutions of the Assembly.</p> <p>The Commissioner, in consultation with the Advisory Council, was to submit annual reports to the Secretary-General and such other special reports "as he may consider necessary".</p>
36. United Nations Council for Libya	289 A (IV)	P	S D/ I	D/ I	L	C	F	SG	<p>The Council was to "aid and advise" the Commissioner. It was also provided that the Commissioner, in the discharge of his functions, was to "consult and be guided by" the advice of the members of the Council, it being understood that he might call on different members for advice on</p>

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
36. United Nations Council for Libya (continued)									different regions and subjects. Certain States to appoint representatives were designated by the Assembly. A representative of the people of Libya and a representative of the minorities in Libya were to be appointed by the Commissioner after consultation with the Administering Powers, the representatives of the Governments named by the Assembly and other personalities and organizations in Libya. It was provided that there should be added to the reports "any memorandum or document that the United Nations Commissioner or a member of the Council may wish to bring to the attention of the United Nations". (see also above under Remarks on the Commissioner)
37. United Nations Advisory Council for the Trust Territory of Somaliland under Italian Administration	289 A (IV) 442 (V)	P	S	D	L	-	F	TC	Resolution 289 (IV) specified that the precise terms of reference of the Advisory Council were to be determined in the Trusteeship Agreement, which was adopted under resolution 442 (V) (G A (V), Suppl. No. 10).

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
37. United Nations Advisory Council for the Trust Territory of Somaliland under Italian Administration (continued)									<p>The Advisory Council was to aid and advise the Administering Authority; the Trusteeship Agreement specified certain questions on which the advice of the Council was to be sought.</p> <p>The States Members of the Advisory Council, if they were not Members of the Trusteeship Council were to be entitled to participate without vote in that Council's debates on questions relating to the Territory. The members of the Advisory Council or a majority acting in the name of the Advisory Council might make oral statements or submit written reports or memoranda to the Trusteeship Council.</p>
38. United Nations Commission for Eritrea	289 A (IV)	P	S	D	L	C	F	SG	<p>The Commission was to communicate its report to the Secretary-General for distribution to Member States in time for consideration by the Assembly at its next session. The Interim Committee was also to consider the report and proposals and report on it, with conclusions, to the Assembly.</p>

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
39. United Nations Relief and Works Agency for Palestine Refugees in the Near East [UNRWA] - Director	302 (IV)	0	I	SG	I	-	-	D/SG	Although it was not expressly stated that the headquarters or place of meeting should be in the field, it is clear from the resolution that this was intended. The Director was to report annually to the Assembly (the report to include an audit of funds) and to submit to the Secretary-General such other reports as the Agency might wish to bring to the attention of Members. The Director was also instructed to consult with the Palestine Conciliation Commission.
40. Advisory Commission to the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East [UNRWA]	302 (IV)	0	S	D	I	-	-	-	The Advisory Commission was to "advise and assist" the Director "in the execution of the programme".
41. Office of the United Nations High Commissioner for Refugees - United Nations High Commissioner	319 (IV) 428 (V)	0	I	E	I	-	G	ESC	Established at the fourth session of 1 January 1951; Statute adopted and High Commissioner elected at the fifth session.

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
41. Office of the United Nations High Commissioner for Refugees - United Nations High Commissioner (continued)									The Assembly was to review, not later than its eighth session, the arrangements with a view to determining whether the Office would be continued after 31 December 1953; the Office was continued for a further five years from 1 January 1954 by resolution 727 (VIII).
42. Special Committee on Information transmitted under Article 73 e of the Charter	332 (IV)	S	S	D/E	L	-	-	D	Originally established for three years. The Committee was continued on the same basis for a further three-year period under resolution 646 (VII) of 10 December 1952. Composed of Members transmitting information and an equal number of Members elected by the Fourth Committee on behalf of the General Assembly.
43. United Nations Administrative Tribunal	351 (IV)	J	E	E	S	-	-	-	The Tribunal's Statute provides for appointment of members by the Assembly; members are elected by secret ballot by the Fifth Committee; the Assembly has accepted the Committee's recommendation.

Established at the fifth session

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
44. United Nations Commission for the Unification and Rehabilitation of Korea <u>UNCURK</u>	376 (V)	F	S	D	I	-	F	D/SG	Under resolution 410 (V), UNCURK was also given certain operational functions in relation to UNKRA, for example, it was authorized to determine, after consultation with the Agent General, the geographical areas within which the Agency was to operate and to designate authorities in Korea with which the Agent General might establish relationships, as well as to "take such steps as may be needed to support the Agent General in fulfilling his task".
45. Interim Committee on Korea	376 (V)	P	S	D	I	C	H	-	
46. Peace Observation Commission	377 A (V) Sect. B	P	S	D	S	-	P	-	Differs from other political commissions in that it was not set up for any specific task but to be generally available for observation and report on the situation "in any area where there exists international tension the continuance of which is likely to endanger the maintenance of international peace and security".

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
46. Peace Observation Commission (continued)									In the case of use of the Commission by the Assembly (or the Interim Committee when the invitation or consent in session) the invitation or consent of the State into whose territory the Commission would go is necessary. May be utilized by the Assembly (or by the Interim Committee when the Assembly is not in session) if the Security Council is not exercising its Charter functions on the matter in question. It may also be used by the Security Council.
47. Panel of military experts	577 A (V) Sect. C	S	E	SG	S	-	-	-	A panel of individual experts who could be made available, on request, to Member States. Secretary-General to appoint with the approval of the Collective Measures Committee.
48. Collective Measures Committee	577 A (V) Sect. D	S	S	D	L	-	-	D/SC	Under resolution 503 (VI) the Committee was continued for a further year and under resolution 703 (VII) it was directed to report to the ninth session. Any variations in its terms of reference under these resolutions do not affect this classification.

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
49. Standing Committee on the Repatriation of Greek Children	382 C (V)	F	S	D	I	GA 618 (VII)	-	-	The Secretary-General was to report on the implementation of the resolution.
50. Group on Cease-Fire in Korea	304 (V)	P	E	P	I	C	-	D	
51. United Nations Tribunal in Libya	388 A (V) article X	J	E	SG	I	-	F	-	Continued under resolution 792 (VIII). Members to be selected for their legal qualifications from the nationals of those States not directly interested.
52. United Nations Commissioner in Eritrea	390 A (V)	P	I	E	I	C	F	D	Elected on the nomination of a committee of the General Assembly. The Assembly, in resolution 617 (VII), took note of the Commissioner's final report and expressed appreciation of his services.
53. Negotiating Committee on Contributions to Programmes of Relief and Rehabilitation in Korea and Relief and Reintegration of Palestine Refugees	393 (V) 410 (V)	A	S	P	I	R	-	-	As soon as the Negotiating Committee had ascertained the extent to which Members were willing to contribute, the Secretary-General was to notify delegations.

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
54. United Nations Korean Reconstruction Agency (UNKRA) - Agent General	410 (V)	O	I	SG	I	-	J	SG	<p>The Secretary-General was to appoint the Agent General after consultation with UNCURK and the Advisory Committee on Korean Reconstruction.</p> <p>The Agent General was to report to the General Assembly through the Secretary-General, transmitting copies simultaneously to UNCURK and the Economic and Social Council.</p>
55. Advisory Committee to the Agent General of the Korean Reconstruction Agency	410 (V)	O	S	D	I	-	H	-	<p>The Committee was to advise the Agent General "with regard to major financial, procurement, distribution and other economic problems pertaining to his planning and operations".</p> <p>The Assembly voted on and adopted a proposal of the President nominating the members.</p> <p>Authorized to meet elsewhere "in special circumstances" after consultation with the Agent General "if it deems that this would be essential to the proper performance of its work".</p>
56. Committee on the draft Convention on Freedom of Information	426 (V)	S	S	D	L	C	H	ESC	

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
57. <u>Ad Hoc Commission on Prisoners of War</u>	427 (v)	S	E	I/ SG	L	C	-	SG	To consist of "three qualified and impartial persons". To be chosen by the International Red Cross or, failing that, by the Secretary-General.
58. <u>Ad Hoc Committee on South West Africa</u>	449 A (v)	P/S	S	D	L	R	-	D	Reconstituted under resolution 570 (VI) until the next regular session and continued under resolution 651 (VII) to report to the eighth session. Was to negotiate with the Union of South Africa as well as to study reports and petitions.
59. <u>Committee on International Criminal Jurisdiction</u>	489 (v)	S	S	D	L	C	G	SG	The Secretary-General was to communicate the report to Member Governments for observations and to place the question on the agenda of the seventh session.
60. <u>Special Committee on the representation of China</u>	490 (v)	S	S	E	L	C	-	D	Elected on the nomination of the President.
61. <u>Committee of Twelve [on atomic energy]</u>	496 (v)	S	S	D	L	C	-	D	
62. <u>Additional Measures Committee</u>	498 (v)	S	S	D	L	-	-	D	

Title of subsidiary organ	Remarks
63. Good Offices Committee	It was inferred that the Committee would report directly to the Assembly.
Resolution establishing	498 (V)
Functions	d
Membership	E
Method of appointment	d
Duration	1
Method of termination	.
Place of meeting	.
Method of reporting	.

Established at the sixth session

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
64. Disarmament Commission	502 (VI)	S	S	D	I	-	-	SC/D	The Commission was established "under the Security Council".
65. United Nations Commission to investigate Conditions for Free Elections in Germany	510 (VI)	P	S	D	I	-	F	SG	The Commission adjourned sine die while remaining at the disposal of the United Nations and all parties concerned to carry out its task during such time as its mandate remained in force. The Assembly had not, by the end of the eighth session, taken action on the Committee's report. It was to report to the Secretary-General by a specified date "for the consideration of the four Powers and for the information of the other Members of the United Nations".
66. United Nations Tribunal in Eritrea	530 (VI) article XI	J	E	SG	I	-	F	-	Members to be selected for their legal qualifications from the nationals of three different States not directly interested. It was provided that the members might be the same as those of the Tribunal in Libya.

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
67. Committee on Administrative Unions	563 (VI)	S	S	D	L	C	-	D	
68. Ad Hoc Committee on Factors (Non-Self-Governing Territories)	567 (VI)	S	S	D	L	C	-	D	
69. Negotiating Committee for Extra-Budgetary Funds	571 B (VI) 607 (VI)	A	S	P	L	A	-	-	<p>The Committee was to consult Members and non-Members "as soon as possible during the current session". It was extended under resolution 607 (VI) for as long as necessary after the close of the session.</p> <p>As soon as the Committee had ascertained the extent to which Members were willing to contribute the Secretary-General, at the Committee's request, was to arrange during the current session meetings of Member and non-Member States at which the pledges would be made known.</p>
70. Special Committee on legal and drafting questions	597 (VI)	S	S	D	L	C	H	D	

Established at the seventh session

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
71. United Nations Good Offices Commission on the question of the treatment of people of Indian origin in the Union of South Africa	615 (VII)	P	E	P	L	-	-	D	Continued under resolution 719 (VIII) to report to the ninth session.
72. United Nations Commission on the Racial Situation in the Union of South Africa	616 A (VII)	S	E	D/ P	L	-	-	D	Continued under resolution 721 (VIII) to report to the ninth session. Original members were appointed by the Assembly on the proposal of the President; resolution 721 (VIII) provided that if any members of the Commission were unable to continue their membership they should be replaced by the President in consultation with the Secretary-General.
73. Special Committee on Admission of New Members	620 A (VII)	S	S	D	L	R	-	D	The report was to be transmitted to the Secretary-General in time for distribution to Members two months before the next session.

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
74. Group of Experts on Financing of Economic Development through the Establishment of Equitable Prices	623 (VII)	S	E	SG	L	-	-	D/ ESC	The report was to be transmitted to the General Assembly with the comments of the Economic and Social Council.
75. Ad Hoc Committee on Factors (Non-Self-Governing Territories)	648 (VII)	S	S	D	L	-	-	-	
76. Committee on Special Administrative Questions	681 B (VII)	S	S	D	L	C	-	D	It was to meet "in the interval" between the seventh and eighth sessions and to report at the eighth session.
77. 1953 Committee on International Criminal Jurisdiction	687 (VII)	S	S	P	L	C	H	D	Members to be designated by the President in consultation with the Chairman of the Sixth Committee. The exact date of the Committee's meeting was to be determined by the Secretary-General.
78. Special Committee on the question of defining aggression	688 (VII)	S	S	D	L	-	H	-	The Committee's report was to be communicated by the Secretary-General to Member States for comments prior to consideration at the ninth session.

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
79. Special Committee on Measures to Limit the Duration of Regular Sessions of the General Assembly	689 (VII)	S	S	D	L	C	-	-	The report was to be transmitted by the Secretary-General to Members for comment prior to consideration at the eighth session.
80. Negotiating Committee for Extra-Budgetary Funds	695 (VII)	A	S	P	L	R	-	D	In addition to the report, meetings were to be arranged, if the Committee requested, at which pledges should be made known (see Committee established at the sixth session).
81. Special Committee on Programme of Conferences	698 (VII)	S	S	P	L	C	-	D	
82. United Nations Commission <u>For</u> investigation of charges of use by United Nations forces of bacteriological warfare	706 (VII)	P	S	D	L	-	F	SG	The Commission was to be set up after the President had received an indication of acceptance by the Governments concerned. It was, in fact, never set up.

Established at the eighth session

Title of subsidiary organ	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
83. Committee of Good Offices on the Admission of New Members	718 (VII)	S	S	D	L	-	-	D	The Committee was, perhaps, rather more than a study committee since it was to "consult" with members of the Security Council with the object of reaching an understanding to facilitate the admission of new Members.
84. Question of establishing a Special Rapporteur on the special United Nations fund for economic development	724 B (VIII)	S	I	D	L	-	-	ESC/D	An interim report was to be submitted to the Economic and Social Council and a final report to the Assembly at its ninth session.
85. Committee on South West Africa	749 A (VIII)	S/P	S	D	I	-	-	D	Appointed by the Assembly on recommendation of the Fourth Committee to the President.
86. Sub-Committee on the Questionnaire Formulated by the Trusteeship Council	751 (VIII)	S	S	D	L	-	-	TC	
87. Negotiating Committee for Extra-Budgetary Funds	759 (VIII)	A	S	P	L	-	-	D	

Bodies to be established by the Secretary-General

A distinction is here drawn between bodies established by the Assembly, the members of which were to be appointed by the Secretary-General (which are included in the previous listing) and bodies which the Secretary-General was recommended or authorized to establish.

Title of body	Resolution establishing	Functions			Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
		A	E	SG						
1. International Civil Service Commission	13 (I) para. 6	A	E	SG	S	-	-	-	-	To be appointed after consultation with the heads of the specialized agencies brought into relationship with the United Nations.
2. Advisory Committee on a statute for a United Nations administrative tribunal	13 (I) para. 11	S	E	SG	L	-	-	-	D	"possibly including representatives of the staff".
3. Advisory Group of Experts ^{to} classify posts, etc.	13 (I) para. 18	A	E	SG	L	-	-	-	-	
4. Advisory Group of Experts (to assist in organizing administrative and budgetary aspects of the Organization)	14 (I) para. 4	A	E	SG	L	-	-	-	-	
5. Director of United Nations Relief for Palestine Refugees	212 (III)	O	I	SG	I	R	-	-	-	The Secretary-General might delegate to the Director "such responsibility as he may consider appropriate for the overall planning and implementation of the relief programme".

Title of body	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
5. Director of United Nations Relief for Palestine Refugees (continued)								Method of reporting	The Secretary-General was to report to the next session on the action taken as a result of the resolution.
6. Ad Hoc Advisory Committee on Palestine Refugees	212 (III)	O	S P	I	R			Method of reporting	The Secretary-General might submit to the Committee any matter of policy or principle on which he wished the committee's advice. The resolution stated that the Assembly "Agrees to the convoking, at the discretion of the Secretary-General, of an ad hoc advisory committee, the members of which were to be selected by the President."
7. United Nations Panel of Field Observers	297 B (IV)	P	E	SC	S			Method of reporting	The panel was to be a list of persons qualified to assist United Nations missions in the functions of observation and supervision. It was to be based on the principle of equitable geographical distribution.
8. Committee on Postage Stamps	454 (V)	A	E	SC				Method of reporting	

Bodies to be established by other organs

Title of body	Resolution establishing	Functions	Membership	Method of appointment	Duration	Method of termination	Place of meeting	Method of reporting	Remarks
Balkan sub-commission of the Peace Observation Commission	508 (VI)	P	S	I	I	-	H	POC/ SG	<p>The Peace Observation Commission was requested to appoint the sub-commission.</p> <p>The sub-commission might dispatch observers to any area of international tension in the Balkans at the request of any State concerned and might visit such area.</p> <p>It was to report as it considered necessary to the Peace Observation Commission and to the Secretary-General for the information of Member States.</p>

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